

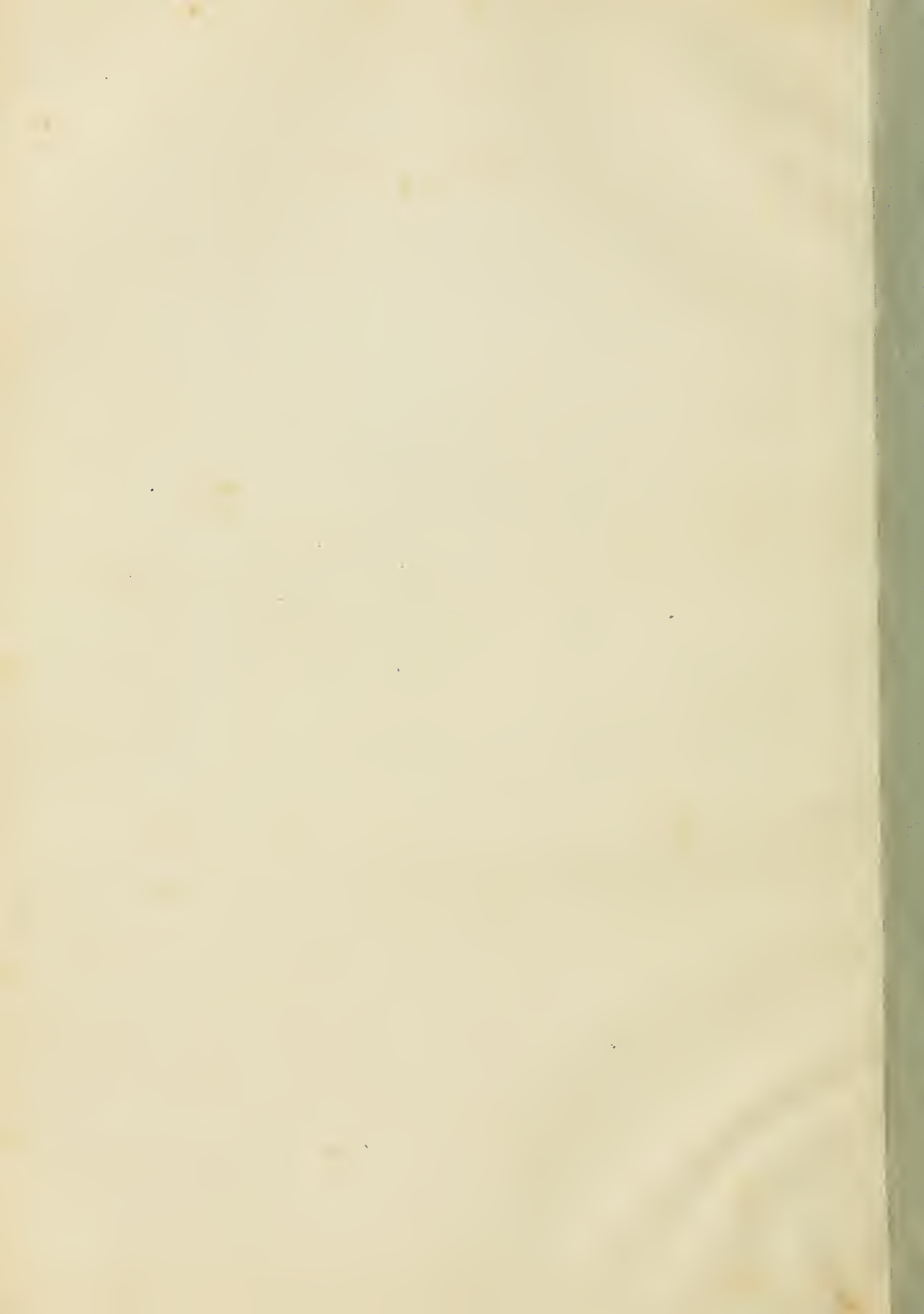
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THE
CONSOLIDATED STATUTES
OF THE
COLONY OF QUEENSLAND.

PART I.



BY AUTHORITY:

J. C. BEAL, GOVERNMENT PRINTER, WILLIAM STREET, BRISBANE.

1868.

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STATUTE LAW OF QUEENSLAND.

(CONSOLIDATION OF)

REPORT.

To His Excellency Sir GEORGE FEROUSSON BOWEN, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Captain-General and Governor-in-Chief of the Colony of Queensland and its Dependencies, and Vice-Admiral of the same, &c., &c.

MAY IT PLEASE YOUR EXCELLENCY,

The undersigned, the Commissioners for inquiring into and revising the Statute Law of Queensland, respectfully present to your Excellency Draft Bills, comprised in three classes.

CLASS I.

Relating to the Legislature and the Supreme Court.

1. Acts Shortening Act of 1867.
2. Constitution Act of 1867.
3. Legislative Assembly Act of 1867.
4. Electoral District Acts of 1867.
5. Elections Act of 1867.
6. Supreme Court Act of 1867.

CLASS II.

Relating to the General Law.

7. Common Law Process Act of 1867.
8. Common Law Practice Act of 1867.
9. Joinder and Revivor Act of 1867.
10. Common Law Pleading Act of 1867.
11. Statute of Frauds and Limitations 1867.
12. Evidence and Discovery Act of 1867.
13. Jury Act of 1867.
14. Oaths Act of 1867.
15. Mercantile Act of 1867.
16. Bills of Exchange Act of 1867.
17. Distress, Replevin, and Ejectment Act of 1867.
18. Succession Act of 1867.
19. Probate Act of 1867.
20. Curator of Intestate Estates Act of 1867.
21. Interdict Act of 1867.
22. Equity Act of 1867.
23. Trustees and Incapacitated Persons Act of 1867.
24. Costs Act of 1867.

CLASS III.

Relating to Inferior Courts of Record and Miscellaneous Matters.

25. District Courts Act of 1867.
26. Small Debts Courts Act of 1867.
27. Summary Ejectment Act of 1867.
28. Aliens Act of 1867.
29. Medical Act of 1867.
30. Repealing Act of 1867.

The

The foregoing are the short titles of the Bills. The full titles will be found in the Schedule annexed, and will more fully describe their nature and contents.

These Bills are, for the most part, consolidations, with such variations as were necessary to harmonise the phraseology and adapt the language to the changed positions of the sections. In some instances repealed sections have been revived, to give meaning to unrepealed sections, while occasionally matters of practical detail have been altered, and sometimes perhaps the law itself has been modified, due regard being had to its spirit. It would be impracticable in this report to embody particulars of the above-mentioned changes; but in all cases the sources of the enactments will be found in the marginal references appended to the respective sections. Where no reference appears to the works of the Hon. R. Pring or Mr. Cary, the proposed section, if subsequent to the 9 Geo. IV. c. 83, is new, though for the most part, as will appear from the margination, derived either from Imperial legislation, or restoring the common law. The Commissioners have incorporated in their drafts many of the beneficial provisions of the Acts of the 22 and 23 Victoria, chapter 35, and of the 23 and 24 Victoria, chapters 38 and 126.

The recent home legislation as to Bills of Exchange and Probate has been embodied by the Commissioners in two Bills respectively so intitled.

Dated at Brisbane, the 2nd day of August, A.D. 1867.

(Signed) JAMES COCKLE, C.J.
ALFRED JAMES PETER LUTWYCHE, J.
CHARLES LILLEY, A.G.

SCHEDULE OF CONSOLIDATED BILLS—1867.

1. A Bill for Shortening Acts of the Legislature.
2. A Bill to Consolidate the Laws relating to the Constitution of the Colony of Queensland.
3. A Bill to Consolidate certain Laws relating to the Legislative Assembly.
4. A Bill to Consolidate the Laws relating to the Number of Members of the Legislative Assembly and to the Electoral Districts whereby such Members are returned.
5. A Bill to Consolidate the Laws relating to Parliamentary Elections.
6. A Bill to Consolidate and Amend the Laws relating to the Supreme Court.
7. A Bill to Consolidate and Amend the Laws relating to Mesne Process and Process of Execution and to the Remedies of Plaintiffs in Actions at Common Law.
8. A Bill to Consolidate and Amend the Laws relating to Practice at Common Law.
9. A Bill to Consolidate and Amend the Laws relating to the Joinder of Causes of Action and of Parties to Actions and to the Revivor of Actions at Common Law.
10. A Bill to Consolidate and Amend the Laws relating to Pleading in Actions at Law.
11. A Bill to Consolidate and Amend the Laws relating to Frauds and the Limitation of Actions.
12. A Bill to Consolidate and Amend the Law of Evidence and Discovery at Common Law.
13. A Bill to Consolidate and Amend the Law relating to Jurors and Juries.
14. A Bill to Consolidate and Amend the Laws relating to Oaths.
15. A Bill to Consolidate and Amend the Laws relating to Mercantile Matters.
16. A Bill to Consolidate and Amend the Laws relating to Bills of Exchange Promissory Notes and Cheques.
17. A Bill to Consolidate and Amend the Laws relating to Distress Replevin and Ejectment.
18. A Bill to Consolidate and Amend the Laws relating to Dower Inheritance Succession Wills Powers Uses and Remedies against Realty.
19. A Bill to Consolidate and Amend the Laws relating to Probate.
20. A Bill to Consolidate and Amend the Laws relating to the Curator of Intestates Estates.
21. A Bill to Consolidate and Amend the Laws relating to Arbitration Interpleader Mandamus Quo Warranto Prohibition and Injunction.
22. A Bill to Consolidate and Amend the Laws relating to Proceedings in Equity.
23. A Bill to Consolidate and Amend the Laws relating to Trustees Mortgagees Purchasers and Incapacitated Persons.
24. A Bill to Consolidate and Amend the Laws relating to Costs at Common Law and to Taxation in General.
25. A Bill to Consolidate and Amend the Laws relating to District Courts.
26. A Bill to Consolidate and Amend the Laws relating to Small Debts Courts.
27. A Bill for the Speedy Recovery of Tenements Unlawfully Held Over.
28. A Bill to Consolidate and Amend the Laws relating to Aliens.
29. A Bill to Consolidate and Amend the Laws relating to Medical Practitioners Chemists and Druggists.
30. A Bill to Repeal certain Enactments which have been consolidated in twenty-nine several Acts of the present Session.

(Signed) J. MACKENZIE SHAW,
Secretary to the Commission.

ADVERTISEMENT.

THIS ISSUE of the Statutes of Queensland is the result of the labors of a Commission, appointed pursuant to a Resolution of the Legislative Assembly during the Session of 1866. The object kept in view by the Commission was a revision and consolidation of the existing Statute Law, which, without purporting to be a codification, should ensure the complete collection and classification of the various enactments under such heads as would most assist those whose business or avocations render reference to such a work necessary. And, in order thoroughly to carry out what they deemed to be the intention of the Legislature, the Commissioners have introduced portions of Imperial Statutes where, by so doing, they could at once improve the Colonial Law and, assimilating it to that in force at home, render the decisions of the English Courts on analogous points available and, to a great extent, applicable here.

A copious index has been added which, it is hoped, will be of assistance to professional men, students, and others who have occasion to consult the work.

It may be well to call attention to the after-mentioned Imperial Statutes:—

By the 6 and 7 Victoria, c. 22, 1 Pring, 565—Laws or Ordinances made by the Legislatures of British Colonies for admission of the evidence of certain persons residing therein shall have the same effect as other Colonial Laws.

The 19 and 20 Victoria, c. 113, reciting, That it is expedient that facilities be afforded for taking evidence in Her Majesty's Dominions in relation to civil and commercial matters pending before foreign tribunals, contains the following provisions:—

By section 1 Orders may be made for the examination of witnesses in relation to any civil or commercial matter pending before a foreign tribunal.

By section 2 Certificates of ambassadors, &c., shall be sufficient evidence in support of application.

By section 3 The examination of witnesses shall be upon oath, and persons giving false evidence guilty of perjury.

By section 5 Payment of expenses is provided for.

By section 6 Any Supreme Court in any of Her Majesty's Colonies or Possessions abroad, and any Judge of any such Court, and every Judge in any such Colony or Possession who, by any order of Her Majesty in Council, may be appointed for this purpose, shall respectively be Courts and Judges having authority under this Act.

The

The 20 and 21 Victoria, c. 39, is intituled “ An Act to regulate the admission “ of Attorneys and Solicitors of Colonial Courts in Her Majesty’s superior Courts of “ Law and Equity in England in certain cases.”

The 22 and 23 Victoria, c. 63, recites, That great improvements in the administration of the law would ensue if facilities were afforded for more certainly ascertaining the law administered in one part of Her Majesty’s Dominions when pleaded in Courts of another part thereof, and—

By section 1 Courts in one part of Her Majesty’s Dominions may remit a case for the opinion in law of a Court in any other part thereof.

By section 2 The opinion is to be authenticated and certified copy given.

By section 3 The opinion is to be applied by the Court making the remit.

By section 4 Her Majesty in Council or House of Lords, on appeal, may adopt or reject the opinion.

By section 5 The words Supreme Courts shall include, in any other parts of Her Majesty’s Dominions, the superior Courts of Law and Equity therein.

The 23 and 24 Victoria, c. 122, is intituled “ An Act to enable the Legislatures “ of Her Majesty’s Possessions abroad to make enactments similar to the enact- “ ment of the Act ninth George the Fourth chapter thirty-one section eight.”

By the 26 and 27 Victoria, c. 84, Certain Acts of Colonial Legislatures are confirmed.

The 28 and 29 Victoria, c. 63, intituled “ An Act to remove doubts as to the “ validity of Colonial Laws,” contains provisions, of which the marginal abstracts are hereunder given :—

1. Definitions—“ Colony,” “ Legislature,” “ Colonial Legislature,” “ Repre- sentative Legislature,” “ Colonial Law,” “ Act of Parliament,” &c., to extend to Colony when made applicable to such Colony,” “ Governor,” “ Letters Patent.”

2. Colonial Law when void for repugnancy.

3. Colonial Law when not void for repugnancy.

4. Colonial Law not void for inconsistency with certain instructions.

5. Colonial Legislature may establish, &c., Courts of Law. Representative Legislature may alter Constitution.

6. Certified copies of Laws to be evidence that they are properly passed. Proclamation to be evidence of assent and disallowance.

7. Certain Acts enacted by Legislature of South Australia to be valid.

The 29 and 30 Victoria, c. 65, is “ An Act to enable Her Majesty to declare “ Gold Coins to be issued from Her Majesty’s Colonial Branch Mints a legal “ tender for payments and for other purposes relating thereto.”

The

The following Imperial Statutes have reference to the Vice-Admiralty Court :—

The 26 and 27 Victoria, c. 24, is intituled “ An Act to facilitate the Appointment of Vice-Admirals and of Officers in Vice-Admiralty Courts in Her Majesty’s Possessions abroad and to confirm the past Proceedings to extend the Jurisdiction and to amend the Practice of those Courts.” Its short title is the “ Vice-Admiralty Courts Act 1863.”

The 27 and 28 Victoria, c. 24, is intituled “ An Act to provide for the appointment duties and remuneration of agents for ships of war and for the distribution of salvage bounty prize and other money among the officers and crews thereof.” Its short title is the “ Naval Agency and Distribution Act 1864.”

The 30 and 31 Victoria, c. 45, is intituled “ An Act to extend and amend the Vice-Admiralty Courts Act 1863.” Its short title is the “ Vice-Admiralty Courts Act Amendment Act 1867.”

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THE QUEENSLAND STATUTES.

An Act for Shortening Acts of the Legislature. 31 VICTORIÆ No. 6.
[26th November, 1867.]

WHEREAS it is expedient to shorten statutes Be it enacted by Preamble.
the Queen's Most Excellent Majesty by and with the advice and
consent of the Legislative Council and Legislative Assembly of
Queensland in Parliament assembled and by the authority of the same
as follows—

Repeal of Acts.

1. Every Act of the Legislature of Queensland for the time Acts of the Governor
and Council may be
altered &c. in the
same session.
16 Vic. No. 1 s. 1.
1 Pring 9.
being however constituted may be altered amended or repealed in the
same legislative session any law or usage to the contrary notwith-
standing.

2. Wherever any Act shall be made repealing in the whole or 13 & 14 Vic. c. 21 s. 1.
in part any former Act and substituting some provision or provisions Repealed enactments.
16 Vic. No. 1 s. 4.
1 Pring 10.
13 & 14 Vic. c. 21 s. 6.
in lieu thereof such provision or provisions so repealed shall remain in
force until the substituted provision or provisions shall come into
operation by force of the last made Act and such repeal shall not
without express words affect any Act matter or thing commenced to
be done under the repealed Act but the same may be continued under
the said repealed Act unless the provisions of the repealing Act shall
be adapted to such continuation.

3. The repeal of an enactment by which a previous enactment Repealed or expired
enactments.
2 Vic. No. 12 s. 4.
1 Pring 13.
13 & 14 Vic. c. 21 s. 5.
was repealed shall not have the effect of reviving such last-mentioned
enactment without express words And neither the repeal nor the
expiration of an enactment shall affect any civil proceeding previously
commenced under the same but every such proceeding may be
continued and every thing in relation thereto be done in all respects as
if the enactment continued in force.

Form of Acts.

4. Such Acts shall be divided into sections if there be more Acts to be divided
into sections without
introductory words.
16 Vic. No. 1 s. 2.
1 Pring 10.
13 & 14 Vic. c. 21 s. 2.
enactments than one which sections shall be deemed to be substantive
enactments without any introductory words.

5. When any Imperial Act or any Act of the Legislature or of References to former
enactments.
16 Vic. No. 1 s. 3.
1 Pring 10.
and 13 & 14 Vic. c. 21 s. 3.
any former Legislature or any section therein shall be referred to in
any Act it shall be sufficient to cite the same by the year of the reign
in which such Act was made and the chapter or number of such Act
and

31 VICTORIA No. 6. and the number of such section without reciting the title of such Act or the provisions of such section so referred to and the references in all cases shall be made according to the copies of such Acts printed by the Government Printer. Provided that where it is only intended to amend or repeal a portion only of a section it shall still be necessary either to recite such portion or to set forth the matter or thing intended to be amended or repealed.

Commencement of Acts.

Time of commence-
ment of Acts.
22 Vic. No. 12 s. 2.
1 Pring 12.

6. Every Act heretofore or hereafter passed by the Legislature for the time being shall be deemed to have commenced and shall take effect on the day on which such Act received or shall receive the royal assent unless a contrary intention be expressed therein. And the date purporting to be that of such assent which shall appear on the copy of any such Act printed by the Government Printer or purporting so to be or which shall be printed on the copy of any such Act in the *Gazette* shall be received for all purposes as evidence of the date of such assent and be judicially taken notice of.

33 Geo. III. c. 13 s. 1

Proviso.
Reserved Acts.
22 Vic. No. 12 s. 3.
1 Pring 13.

7. Provided that every Act reserved for the signification of Her Majesty's pleasure thereon shall commence only on the day on which the fact of Her Majesty's assent shall be proclaimed by the Governor in the *Gazette* or on such day thereafter if any as the Act itself shall have prescribed.

Public and Private Acts.

All Acts to be deemed
public Acts.
16 Vic. No. 1. s. 5.
1 Pring 10.
13 & 14 Vic. c. 21 s. 7.

8. Every Act made after the twenty-sixth day of July one thousand eight hundred and fifty-two shall be deemed and taken to be a public Act and shall be judicially taken notice of as such unless the contrary be expressly provided and declared by such Act.

No private Act to
affect property of
Crown or individuals
not named.
16 Vic. No. 1 s. 17.
1 Pring 12.

9. Whenever any Act shall be passed in the nature of a private Act and whereby the property of any individual may be affected nothing therein contained shall be deemed to affect the rights of Her Majesty Her Heirs and Successors or of any bodies politic or corporate or of any person excepting those at whose instance or for whose especial benefit such Act may have been passed and those claiming by through or under them but all such rights shall be deemed to be saved in any such Act in the same manner as if a proviso for that purpose had been expressly contained therein and enacted thereby.

Construction of Words.

Meaning of the words
"Her Majesty."
16 Vic. No. 1 s. 7.
1 Pring 10.
"Queensland."
"Legislature."
"Governor."

10. Whenever the word "Her" or "His" Majesty shall be used in any Act the same shall be taken to include the successors to the Crown of England and "Queensland" shall mean Queensland and the dependencies thereof and "Legislature" the Legislature thereof for the time being however constituted and whenever the word "Governor" shall be used the same shall be construed to mean the Governor or other person for the time being lawfully administering the government of this colony and the words "Governor in Council" shall mean the Governor or such other person acting by and with the advice of the Executive Council and whenever any person holding or occupying a particular office or position shall be mentioned or referred to in general terms such mention or reference shall be taken to include all persons who shall at any time thereafter occupy for the time being the said office

"Governor in
Council."

office or position and whenever any power or authority shall be given to the Judges of the Supreme Court collectively to make or approve of any general rules or orders of the Supreme or any inferior Court the same shall be exercised by a majority of them of whom the Chief Justice (or in case of a vacancy of such office then the senior Puisne Judge) shall be one unless a contrary intention shall appear.

11. In all Acts and in all forms and schedules therein contained or referred to or thereto annexed words importing the masculine gender shall be deemed and taken to include females and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided and the word "person" or "party" to include bodies politic or corporate or collegiate as well as individuals if the context be applicable thereto and the word "month" to mean calendar month unless words be added showing lunar month to be intended and the word "land" shall include messuages tenements and hereditaments corporeal or incorporeal of any tenure or description and whatever may be the estate or interest therein unless where there are words to exclude houses and buildings or to restrict the meaning to tenements of some particular tenure or to some particular estate or interest and the word "estate" shall include any estate or interest charge right title claim demand lien or encumbrance at law or in equity unless a more limited meaning is indicated by the context and the words "oath" "swear" and "affidavit" shall include affirmation declaration affirming and declaring in the case of persons by law allowed to declare or affirm instead of swearing.

12. In the construction of any Act unless the contrary appear from the context the word "indictment" shall be understood to include "information" "inquisition" and "presentment" as well as indictment and also any "plea" "replication" or other pleading and any *nisi prius* or like record and the terms "finding of the indictment" shall be understood to include "the taking of an inquisition" "the exhibiting of an information" and "the making a presentment" and the word "property" shall be understood to include goods chattels money valuable securities and every other matter or thing whether real or personal upon or with respect to which any offence may be committed and the term "circuit court" shall mean any court holden by and before a judge of the Supreme Court under and by virtue of section twenty-eight of the "*Supreme Court Act of 1867*" or otherwise in a like manner.

13. The time prescribed or allowed in an Act for the doing of a particular thing shall in all cases be taken to exclude the day of the act or event from or after which the time is to be reckoned but shall include the day for the doing of that thing. Provided that where that day falls on a Sunday or on a Christmas Day or Good Friday the thing may be done on the day following and distance of space mentioned or indicated in an Act shall be computed according to the nearest road ordinarily used in travelling unless measurement in a direct line be expressed or that construction be rendered necessary by the context.

14. When

31 VICTORIA No. 6.
"Judges of Supreme Court."
15 & 16 Vic. c. 76 s. 223.
17 & 18 Vic. c. 125 s. 98.
23 & 24 Vic. c. 126 s. 37.
27 Vic. No. 14 s. 20.
3 Pring 316.
Interpretation of certain words in Acts.
22 Vic. No. 12 s. 6.
1 Pring 13.
13 & 14 Vic. c. 21 s. 4.
Gender and number.
"Person" or "party."
"Month."

"Land."

"Estate."

"Oath" &c.

Interpretation of other terms in Acts.
29 Vic. No. 13 s. 76.
"Indictment."

"Property."

"Circuit court."

Reckoning of time.
22 Vic. No. 12 s. 11.
1 Pring 13.

31 VICTORIA No. 6.

Words "in for or of the Colony of Queensland" to be implied.
16 Vic. No. 1 s. 8.
1 Pring 11.

Term "quarter sessions."
22 Vic. No. 12 s. 10.
1 Pring 13.

Term "*Gazette*" and "petty sessions."
22 Vic. No. 12 s. 6.
1 Pring 13.

Power to appoint implies power to remove-re-appoint &c.
16 Vic. No. 1 s. 9.
1 Pring 11.

From time to time.
16 Vic. No. 1 s. 10.
1 Pring 11.

Power to revoke and alter rules and regulations to be inferred from power to make them.
16 Vic. No. 1 s. 11.
1 Pring 11.

When a power is discretionary and when not.
22 Vic. No. 12 s. 8.
1 Pring 13.

14. When any officer or office is referred to in any enactment the same shall be taken to refer to the officer or office of the description designated within and for the Colony of Queensland and all references to localities jurisdictions and other matters and things shall be taken to relate to such localities jurisdictions and other matters and things within and of the said colony unless in any such case the contrary shall appear to have been intended by the Legislature.

15. The term "quarter sessions" or "general quarter sessions" in any Act now or hereafter passed shall be taken equally to include a court of general sessions of the peace and every such court periodically sitting and ordinarily presided over by the chairman of quarter sessions or any judge of a district court acting as chairman shall be deemed to have had and shall have the same jurisdiction and authority both in civil and in criminal cases as a court of general quarter sessions.

16. The word "*Gazette*" used in this or any other Act shall be understood to mean the *Queensland Government Gazette* and the words "petty sessions" shall be understood to mean the justices of the peace assembled at any court of petty sessions or sitting in sessions not being any general or quarter sessions.

Powers to be Implied.

17. Whenever power shall be given by any Act to Her Majesty or to the Governor of the colony or to any officer or person to make appointments to any office or place it shall unless there are words to show a contrary intention be intended that such power shall be capable of being exercised from time to time as occasion may require and that Her said Majesty and the said Governor or such officer or person shall have power to remove or suspend the person appointed and to appoint permanently or temporarily as the case may require another person in his stead or in the places of any deceased sick or absent holder of such appointment.

18. Whenever power shall be given to do perform or submit to any act matter or thing such power shall be capable of being exercised from time to time as occasion may require unless the nature of the thing or the words used shall indicate a contrary intention.

19. In every enactment whereby power shall be given to any officers or persons to make any rules orders or regulations it shall be implied that such officers or persons may revoke alter or vary the same from time to time as occasion may require unless the terms used or the nature and objects of the power shall indicate that such power is intended to be exercised finally in the first instance.

Powers when Discretionary.

20. Where in any enactment passed after the twenty-seventh day of November one thousand eight hundred and fifty-eight a power is conferred on any officer or person by the word "may" or by words "it shall be lawful" or the words "shall or may be lawful" applied to the exercise of that power such word or words shall be taken to import that the power may be exercised or not at discretion but where the word "shall" is applied to the exercise of any such power the construction shall be that the power conferred must be exercised.

Oaths and their Sanction.

31 VICTORIA No. 6.

21. Whenever any court judge justice officer commissioner arbitrator or other person shall be authorised by law or by consent of parties to hear and determine any matter or thing such court judge justice officer commissioner arbitrator and other person shall have authority to receive and examine evidence and are hereby empowered to administer an oath to or take an affirmation from all such witnesses as are legally called before them respectively.

Power to administer oath implied from power to hear and determine.
16 Vic. No. 1. s. 12.
1 Pring 11.

22. In all cases in which an oath or affirmation shall be authorised to be administered or taken any false evidence given by a party to whom such oath shall have been administered or who shall have made such affirmation shall be deemed to be a misdemeanor and punishable as perjury and in all cases where a solemn declaration shall be required to be taken or authorised to be received a false declaration made by any person shall be deemed to be a misdemeanor and punishable with fine or imprisonment at the discretion of the court before which such misdemeanor shall have been tried.

False oath or affirmation or declaration punishable.
16 Vic. No. 1 s. 13.
1 Pring 11.

Protection of Public Officers.

23. Whenever a power is conferred or duty imposed by any Act upon any person by virtue or in the exercise of any public office or employment and such person is sued in respect of anything done by him which he shall allege to have been done in pursuance thereof he may plead the general issue (with or without any other plea or pleas) and give the special matter in evidence under that plea and if he succeeds in the action such person shall recover costs as between attorney and client Provided that he shall at the foot of his plea state the particular Act and section or sections upon which he intends to rely and no other enactment shall at the trial be relied on by him.

For protection of public officers.
22 Vic. No. 12 s. 9.
1 Pring 13.

General Provision.

24. The several provisions of this Act applicable to Acts of the Legislature of this territory shall extend to every Act passed or to be passed by such Legislature for the time being however constituted And every Act passed in this territory by whatsoever Legislature may be referred to by the words "Act passed in this colony" or by the term "Act of the Legislature of New South Wales" Provided that the word "Act" alone when used to indicate an enactment shall equally be taken to mean an Act of the Legislature of this colony unless that construction be inconsistent with the context.

Provisions of the said Act extended to all enactments.
22 Vic. No. 12 s. 1.
1 Pring 12.

Fines Penalties and Summary Proceedings.

25. Whenever any fine penalty or forfeiture shall be imposed or authorised to be imposed by any Act such Act shall be taken to provide that the same when recovered shall be paid one moiety to Her Majesty her Heirs and Successors for the public uses of this colony and in support of the Government thereof and that the same shall be applied in such manner as may from time to time be directed by any Act or Acts of the Legislature of Queensland and that the other moiety thereof shall be paid to the informer or person prosecuting or suing for the same unless the Act imposing the said fine penalty or forfeiture shall otherwise direct.

Appropriation of penalties when Act silent.
16 Vic. No. 1 s. 15.
1 Pring 11.

26. Any

31 VICTORIÆ No. 6.

Who may in general
sue for penalties.

16 Vic. No. 1 s. 16.
1 Pring 12.

All judicial powers
conferred on justices
to be exercised sum-
marily.

22 Vic. No. 1 s. 11.
1 Pring 11.

26. Any fine penalty or forfeiture so imposed may be sued and proceeded for by any person whomsoever unless by the Act imposing the same such right to sue or proceed shall be expressly given to any officer or person by name or designation.

27. Whenever by any Act any penalty fine or forfeiture is made recoverable before or is authorised to be imposed by or before any justice or justices of the peace otherwise than in general or quarter sessions and whenever by any Act a justice or justices is or are empowered to hear and determine otherwise than in general or quarter sessions any matter or to make any order or to do any act of a judicial character such Act shall be taken to empower such justice or justices to adjudicate order and act therein accordingly in a summary way and such Act shall be taken to have enacted that no conviction or order made by any justice or justices of the peace under the authority of the said Act shall be quashed for want of form.

Interpretation in General.

Term "Act" or
"Statute."

22 Vic. No. 12 s. 7.
1 Pring 13.

28. In all indictments and informations and all pleadings and proceedings civil or criminal or penal the word "Statute" or the word "Act" used to indicate an enactment shall equally be taken to mean and include an Act of the Imperial Parliament or an Act of the Legislature of this colony or territory as the context or the case may require.

Mode of pleading
affirmation in lieu of
oath.

6 & 7 Vic. c. 85 s. 2.

29. Wherever in any legal proceeding whatsoever any other legal proceedings may be set out it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation or declaration instead of oath but if it be stated in such first mentioned proceedings or in any record whatsoever that the jurors served and acted as jurors (in the same manner as if no Act had passed for enabling persons to serve as jurors without oath) such proceedings or record shall not be held insufficient in respect thereof.

Commencement and Short Title.

Commencement of
Act.

Short title.

30. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Acts Shortening Act of 1867.*"

An Act to Consolidate the Laws relating to the Constitution of the Colony of Queensland.

31 VICTORIA No. 38.

[28th December, 1867.]

WHEREAS by an Order in Council empowering the Government of
Queensland to make laws and to provide for the administration of

Preamble.

justice in the said colony dated at the Court at Buckingham Palace the sixth day of June one thousand eight hundred and fifty-nine it was declared and ordered by the Queen's Most Excellent Majesty in Council that the Legislature of the Colony of Queensland should have full power and authority from time to time to make laws altering or repealing all or any of the provisions of the said Order in Council in the same manner as any other laws for the good government of the colony except so much of the same as incorporates the enactments of the fourteenth year of Her Majesty chapter fifty-nine and of the sixth year of Her Majesty chapter seventy-six relating to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty Provided that every Bill by which any alteration should be made in the constitution of the Legislative Council so as to render the whole or any portion thereof elective should be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill should be laid before both Houses of the Imperial Parliament for the period of thirty days at least before Her Majesty's pleasure thereon should be signified And whereas by the thirty-first clause of an Act of the sixth year of Her Majesty chapter seventy-six entitled "*An Act for the government of New South Wales and Van Diemen's Land*" it was enacted as follows—"That every Bill which has been passed by the said Council and also every law proposed by the Governor which shall have been passed by the said Council whether with or without amendments shall be presented for Her Majesty's assent to the Governor of the said colony and that the Governor shall declare according to his discretion but subject nevertheless to the provisions contained in this Act and to such instructions as may from time to time be given in that behalf by Her Majesty Her Heirs or Successors that he assents to such Bill in Her Majesty's name or that he withholds Her Majesty's assent or that he reserves such Bill for the signification of Her Majesty's pleasure thereon and all Bills altering or affecting the divisions and extent of the several districts and towns which shall be represented in the Legislative Council or establishing new and other divisions of the same or altering the number of the members of the Council to be chosen by the said districts and towns respectively or increasing the whole number of the Legislative Council or altering the salaries of the Governor superintendent or judges or any of them and also all Bills altering or affecting the duties of customs upon any goods wares or merchandise imported to or exported

Power of alteration
of constitution.
Order in Council
s. 22. 1 Pring 212.

Giving or with-
holding assent to
Bills.
s. 6 Vic. c. 76
s. 31. 1 Pring 196.

" from

- 31 VICTORIA No. 38. “ from the said colony shall in every case be so reserved except such Bills
 “ for temporary laws as the Governor shall expressly declare necessary
 “ to be forthwith assented to by reason of some public and pressing
 “ emergency” And by the thirty-second clause of the said last-mentioned
 Act it was enacted as follows—“ That whenever any Bill which shall have
 Disallowance of Bills assented to.
 5 & 6 Vic. c. 76
 s. 32. 1 Pring 196. “ shall by such Governor have been assented to in Her Majesty’s name the
 “ Governor shall by the first convenient opportunity transmit to one of Her
 “ Majesty’s principal Secretaries of State an authentic copy of such Bill so
 “ assented to and that it shall be lawful at any time within two years after
 “ such Bill shall have been so received by the Secretary of State for Her
 “ Majesty by Order in Council to declare her disallowance of such Bill and
 “ that such disallowance together with a certificate under the hand and
 “ seal of the Secretary of State certifying the day on which such Bill was
 “ received as aforesaid being signified by the Governor to the Legislative
 “ Council of the said colony by speech or message to the said Council or by
 “ proclamation in the *New South Wales Government Gazette* shall make
 “ void and annul the same from and after the day of such signification” And
 by the thirty-third clause of the same Act it was enacted as follows—“ That
 “ no Bill which shall be so reserved for the signification of Her Majesty’s
 Assent to Bills reserved.
 5 & 6 Vic. c. 76
 s. 33. 1 Pring 196. “ pleasure thereon shall have any force or authority within the Colony of
 “ New South Wales until the Governor of the said colony shall signify either
 “ by speech or message to the Legislative Council of the said colony or by
 “ proclamation as aforesaid that such Bill has been laid before Her Majesty
 “ in Council and that Her Majesty has been pleased to assent to the same
 “ and that an entry shall be made in the journals of the said Legislative
 “ Council of every such speech message or proclamation and a duplicate
 “ thereof duly attested shall be delivered to the registrar of the Supreme
 “ Court or other proper officer to be kept among the records of the
 “ said colony and that no Bill which shall be so reserved as aforesaid
 “ shall have any force or authority in the said colony unless Her Majesty’s
 “ assent thereto shall have been so signified as aforesaid within the space
 “ of two years from the day on which such Bill shall have been
 “ presented for Her Majesty’s assent to the Governor as aforesaid”
 And by the fortieth clause of the same Act it was declared and
 enacted as follows—“ That it shall be lawful for Her said Majesty
 “ with the advice of Her Privy Council or under Her Majesty’s
 Governor to conform to instructions.
 5 & 6 Vic. c. 76
 s. 40. 1 Pring 198. “ signet and sign manual or through one of her principal Secretaries
 “ of State from time to time to convey to the Governor of the
 “ said Colony of New South Wales such instructions as to Her Majesty
 “ shall seem meet for the guidance of such Governor for the exercise of the
 “ powers hereby vested in him of assenting to or dissenting from or for
 “ reserving for the signification of Her Majesty’s pleasure Bills to be
 “ passed by the said Council and it shall be the duty of such Governor to
 “ act in obedience to such instructions” And whereas by the Act of
 the eighth year of Her Majesty chapter seventy-four entitled “ *An Act*
 “ *to explain and amend the Act for the government of New South Wales*
 “ *and Van Diemen’s Land*” and by the seventh section thereof after
 reciting that ‘ by the said recited Act’ (to wit the said herein-
 before mentioned Act of the sixth year of Her Majesty chapter
 seventy-six) ‘ it is provided that certain Bills shall in every case be
 ‘ reserved

‘ reserved by the Governor for the signification of Her Majesty’s pleasure thereon and the intent of such provision was to ensure that such Bills as aforesaid should not be assented to by the Governor without due ‘ consideration ’ it was enacted “ That it shall not be necessary for the “ Governor to reserve any such Bill for the signification of Her Majesty’s “ pleasure thereon from which in the exercise of his discretion as limited “ in the said recited Act he shall declare that he withholds Her Majesty’s “ assent or to which he shall have previously received instructions on the “ part of Her Majesty to assent and to which he shall assent accordingly” And whereas by the Act of the fourteenth year of Her Majesty chapter fifty-nine intituled “ *An Act for the better government of Her Majesty’s “ Australian Colonies* ” it was provided and enacted that the provisions of the said Act of the sixth year of the reign of Her Majesty as explained and amended by the said Act of the eighth year of the reign of Her Majesty concerning Bills reserved for the signification of Her Majesty’s pleasure thereon shall be applicable to every Bill so reserved under the provisions of the said Act of the fourteenth year of Her Majesty chapter fifty-nine And whereas it is expedient to consolidate the laws relating to the constitution of Her Majesty’s said Colony of Queensland Now therefore Be it enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Extending the Governor’s powers as to giving or withholding the royal assent.
7 & 8 Vic. c. 74
s. 7. 1 Pring 205.

Reservation of Bills.
13 & 14 Vic. c. 59
s. 33. 1 Pring 218.

The Legislature.

1. There shall be within the said Colony of Queensland a Legislative Council and Legislative Assembly.

Legislative Council and Legislative Assembly.
Order in Council s. 1.
1 Pring 238.

2. Within the said Colony of Queensland Her Majesty shall have power by and with the advice and consent of the said Council and Assembly to make laws for the peace welfare and good government of the colony in all cases whatsoever Provided that all Bills for appropriating any part of the public revenue for imposing any new rate tax or impost subject always to the limitations hereinafter provided shall originate in the Legislative Assembly of the said colony.

Legislative Council and Assembly constituted.
Order in Council
s. 2. 1 Pring 238.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 1. 1 Pring
224.

3. There shall be a session of the Legislative Council and Assembly once at least in every year so that a period of twelve calendar months shall not intervene between the last sitting of the Legislative Council and Assembly in one session and the first sitting of the Legislative Council and Assembly in the next session.

One session of Parliament to be held each year.
Order in Council
s. 9. 1 Pring 210.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 31. 1 Pring
228.

4. No member either of the Legislative Council or of the Legislative Assembly shall be permitted to sit or vote therein until he shall have taken and subscribed the following oath before the Governor of the colony or before some person or persons authorised by such Governor to administer such oath—

No member to sit or vote until he has taken the following oath of allegiance.
Order in Council
s. 11. 1 Pring 240.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 33. 1 Pring
228.

“ I A B do sincerely promise and swear that I will be faithful and bear true
“ allegiance to Her Majesty Queen Victoria as lawful Sovereign of the
“ United Kingdom of Great Britain and Ireland and of this Colony of
“ Queensland dependent on and belonging to the said United Kingdom So
“ help me God ”—

And whensoever the demise of Her present Majesty or of any of Her Successors to the Crown of the said United Kingdom shall be notified by the Governor of the colony to the said Council and Assembly respectively

31 VICTORIA No. 38. tively the members of the said Council and Assembly shall before they shall be permitted to sit and vote therein take and subscribe the like oath of allegiance to the Successor for the time being to the said Crown.

Affirmation may be made instead of oath. Order in Council s. 12. 1 Pring 210. Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41 s. 34. 1 Pring 223. 5. Provided that every person authorised by law to make an affirmation instead of taking an oath may make such affirmation in every case in which an oath is hereinbefore required to be taken.

Disqualifying contractors and persons interested in contracts Election to take place on vacancies. Schedule to 18 & 19 Vic. c. 54 s. 23. 17 Vic. No. 41 s. 23. 1 Pring 223. 6. Any person who shall directly or indirectly himself or by any person whatsoever in trust for him or for his use or benefit or on his account undertake execute hold or enjoy in the whole or in part any contract or agreement for or on account of the public service shall be incapable of being summoned or elected or of sitting or voting as a member of the Legislative Council or Legislative Assembly during the time he shall execute hold or enjoy any such contract or any part or share thereof or any benefit or emolument arising from the same and if any person being a member of such Council or Assembly shall enter into any such contract or agreement or having entered into it shall continue to hold it his seat shall be declared by the said Legislative Council or Legislative Assembly as the case may require to be void and thereupon the same shall become and be void accordingly. Provided always that nothing herein contained shall extend to any contract or agreement made entered into or accepted by any incorporated company or any trading company consisting of more than twenty persons where such contract or agreement shall be made entered into or accepted for the general benefit of such incorporated or trading company.

Proviso exempting from disqualification members of companies exceeding twenty in number.

Election of disqualified persons void. Schedule to 18 & 19 Vic. c. 54 s. 23. 17 Vic. No. 41 s. 23. 1 Pring 223.

Penalty for sitting or voting.

Standing rules and orders to be made. Order in Council s. 13. 1 Pring 240. Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41 s. 35. 1 Pring 229.

7. If any person by this Act disabled or declared to be incapable to sit or vote in the Legislative Council or Legislative Assembly shall nevertheless be summoned to the said Council or elected and returned as a member to serve in the said Assembly for any electoral district such summons or election and return shall and may be declared by the said Council and Assembly as the case may require to be void and thereupon the same shall become and be void to all intents and purposes whatsoever and if any person under any of the disqualifications mentioned in the last preceding section shall whilst so disqualified presume to sit or vote as a member of the said Council or Assembly such person shall forfeit the sum of five hundred pounds to be recovered by any person who shall sue for the same in the Supreme Court of Queensland.

8. The said Legislative Council and Assembly from time to time hereafter as there may be occasion shall prepare and adopt such standing rules and orders as shall appear to the said Council and Assembly respectively best adapted for the orderly conduct of such Council and Assembly respectively and for the manner in which such Council and Assembly shall be presided over in case of the absence of the President or the Speaker and for the mode in which such Council and Assembly shall confer correspond and communicate with each other relative to votes or Bills passed by or pending in such Council and Assembly respectively and for the manner in which notices of Bills resolutions and other business intended to be submitted to such Council and Assembly respectively at any session thereof may be published for general information and for the proper passing entitling and numbering of the Bills to be introduced into and passed by the said Council and Assembly and for the proper presentation of the same to the Governor for Her Majesty's assent all of which

which rules and orders shall by such Council and Assembly respectively be laid before the Governor and being by him approved shall become binding and of force. 31 VICTORIA No. 38.

9. Notwithstanding anything hereinbefore contained the Legislature of the said colony as constituted by this Act shall have full power and authority from time to time by any Act or Acts to alter the provisions or laws for the time being in force under this Act or otherwise concerning the Legislative Council and to provide for the nomination or election of another Legislative Council to consist respectively of such members to be appointed or elected respectively by such person or persons and in such manner as by such Act or Acts shall be determined Provided always that it shall not be lawful to present to the Governor of the said colony for Her Majesty's assent any Bill by which any such alteration in the constitution of the said colony may be made unless the second and third readings of such Bill shall have been passed with the concurrence of two-thirds of the members for the time being of the said Legislative Council and of the said Legislative Assembly respectively Provided also that every Bill which shall be so passed for any of such purposes shall be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill shall be laid before both Houses of the Imperial Parliament for the period of thirty days at the least before Her Majesty's pleasure thereon shall be signified.

Power to alter constitution of Legislative Council.
Schedule to 18 & 19 Vic. c. 54 17 Vic. No. 41. s. 36.
1 Pring 229.
Order in Council s. 22. 1 Pring 242

10. It shall be lawful for the Legislature of the colony by any Act or Acts to be hereafter passed to alter the divisions and extent of the several counties districts cities towns boroughs and hamlets which shall be represented in the Legislative Assembly and to establish new and other divisions of the same and to alter the apportionment of representatives to be chosen by the said counties districts cities towns boroughs and hamlets respectively and to alter the number of representatives to be chosen in and for the colony and in and for the several electoral districts in the same and to alter and regulate the appointment of returning officers and make such new and other provision as they may deem expedient for the issuing and return of writs for the election of members to serve in the said Legislative Assembly and the time and place of holding such elections Provided always that it shall not be lawful to present to the Governor of the colony for Her Majesty's assent any Bill by which the number or apportionment of representatives in the Legislative Assembly may be altered unless the second and third readings of such Bill in the Legislative Council and the Legislative Assembly respectively shall have been passed with the concurrence of a majority of the members for the time being of the said Legislative Council and of two-thirds of the members for the time being of the said Legislative Assembly and the assent of Her Majesty shall not be given to any such Bill unless an address shall have been presented by the Legislative Assembly to the Governor stating that such Bill has been so passed.

Power to alter system of representation.
Schedule to 18 & 19 Vic. c. 54 17 Vic. No. 41. s. 15. 1 Pring 226.

11. Nothing herein contained shall affect the power or authority of any Legislature duly constituted before this Act comes into operation.

Existing Legislature not affected by this Act.

The Governor.

12. It shall be lawful for the Governor to fix such place or places within any part of the colony and such times for holding every session of the Legislative Council and Assembly of the said colony as he may think

Place and time of holding Parliament.
Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41 s. 30. 1 Pring 228.

31 VICTORIA No. 38. think fit such times and places to be afterwards changed or varied as the Governor may judge advisable and most consistent with general convenience and the public welfare giving sufficient notice thereof and also to prorogue the said Legislative Council and Assembly from time to time and to dissolve the said Assembly by proclamation or otherwise whenever he shall deem it expedient.

Provisions of former Acts respecting the allowance and disallowance of Bills reserved.
Order in Council s. 14. 1 Pring 240.

13. The provisions of the before mentioned Act of the fourteenth year of Her Majesty chapter fifty-nine and of the Act of the sixth year of Her Majesty chapter seventy-six entitled "*An Act for the government of New South Wales and Van Diemen's Land*" which relate to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure thereon and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty shall apply to Bills to be passed by the Legislative Council and Assembly constituted under this Act and the said Order in Council and by any other legislative body or bodies which may at any time hereafter be substituted for the present Legislative Council and Assembly.

Appointment to offices under the Government of the colony to be vested in the Governor in Council or alone.
Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41 s. 37. 1 Pring 229.
Exceptions.

14. The appointment of all public offices under the Government of the colony hereafter to become vacant or to be created whether such offices be salaried or not shall be vested in the Governor in Council with the exception of the appointments of the officers liable to retire from office on political grounds which appointments shall be vested in the Governor alone. Provided always that this enactment shall not extend to minor appointments which by Act of the Legislature or by order of the Governor in Council may be vested in heads of departments or other officers or persons within the colony.

Judges continued in the enjoyment of their offices during their good behavior notwithstanding any demise of the Crown.

15. The commissions of the present judges of the Supreme Court of the said colony and of all future judges thereof shall be continue and remain in full force during their good behavior notwithstanding the demise of Her Majesty (whom may God long preserve) or of Her Heirs and Successors any law usage or practice to the contrary thereof in anywise notwithstanding.

But they may be removed by the Crown on the address of Parliament.

16. It shall be lawful nevertheless for Her Majesty Her Heirs or Successors to remove any such judge or judges upon the address of both Houses of the Legislature of this colony.

Their salaries secured during the continuance of their commissions.

17. Such salaries as are settled upon the judges for the time being by Act of Parliament or otherwise and all such salaries as shall or may be in future granted by Her Majesty Her Heirs and Successors or otherwise to any future judge or judges of the said Supreme Court shall in all time coming be paid and payable to every such judge and judges for the time being so long as the patents or commissions of them or any of them respectively shall continue and remain in force.

No money vote or Bill lawful unless recommended by Governor.
Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41 s. 54. 1 Pring 231.

18. It shall not be lawful for the Legislative Assembly to originate or pass any vote resolution or Bill for the appropriation of any part of the said consolidated revenue fund or of any other tax or impost to any purpose which shall not first have been recommended by a message of the Governor to the said Legislative Assembly during the session in which such vote resolution or Bill shall be passed.

No part of public revenue to be issued except on warrants from Governor.

19. No part of Her Majesty's revenue in the said colony arising from any of the sources hereinafter mentioned shall be issued or shall be made

made issuable except in pursuance of warrants under the hand of the Governor of the colony directed to the public treasurer thereof.

Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 55. 1 Pring
231.

The Legislative Council.

20. For the purpose of composing the Legislative Council of Queensland the Governor is hereby authorised to summon in Her Majesty's name by an instrument or instruments under the Great Seal of the said colony from time to time to the said Legislative Council such person or persons as he shall think fit and every person who shall be so summoned shall thereby become a member of the Legislative Council of the said colony Provided always that no person shall be summoned to the said Legislative Council who shall not be of the full age of twenty-one years and a natural-born subject of Her Majesty or naturalized by an Act of the Imperial Parliament or by an Act of the Legislature of New South Wales before the separation or by an Act of this colony Provided also that not less than four-fifths of the members so summoned to the Legislative Council shall consist of persons not holding any office of emolument under the Crown except officers of Her Majesty's sea and land forces on full or half pay or retired officers on pensions.

Legislative Council
how to be composed.
Order in Council
s. 3. 1 Pring 239.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 2. 1 Pring
224.

21. The members of the said Legislative Council who shall be summoned thereto by the Governor shall hold their seats therein for the term of their natural lives subject nevertheless to the provisions hereinbefore referred to and hereinafter contained for vacating the same and for altering and amending the constitution of the said colony as established by this Act.

Duration of office of
Legislative Council-
councillors.
Order in Council
s. 4. 1 Pring 239.
Schedule to 18 & 19
Vic. c. 54. 7 Vic.
No. 41 s. 3.
1 Pring 224.

22. It shall be lawful for any member of the Legislative Council to resign his seat therein by a letter to the Governor and upon the receipt of any such letter by the Governor the seat of such Legislative Councillor shall become vacant.

Resignation of coun-
cillors.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 4. 1 Pring
224.

23. If any Legislative Councillor shall for two successive sessions of the Legislature of the said colony fail to give his attendance in the said Legislative Council without the permission of Her Majesty or of the Governor of the colony signified by the said Governor to the Legislative Council or shall take any oath or make any declaration or acknowledgment of allegiance obedience or adherence to any foreign prince or power or shall do concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power or whereby he may become entitled to the rights privileges or immunities of a subject or citizen of any foreign state or power or shall become bankrupt or take the benefit of any law relating to insolvent debtors or become a public contractor or defaulter or be attainted of treason or be convicted of felony or of any infamous crime his seat in such Council shall thereby become vacant.

Vacating seat by
absence.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 5. 1 Pring
224.

24. Any question which shall arise respecting any vacancy in the Legislative Council on occasion of any of the matters aforesaid shall be referred by the Governor to the said Legislative Council to be by the said Legislative Council heard and determined Provided always that it shall be lawful either for the person respecting whose seat such question shall have arisen or for Her Majesty's Attorney-General for the said colony on Her Majesty's behalf to appeal from the determination of the said Council in such case to Her Majesty and that the judgment of Her Majesty given with the advice of Her Privy Council thereon shall be final and conclusive to all intents and purposes.

Trial of questions of
vacancy.
Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 6. 1 Pring
224.

25. The

31 VICTORIA No. 38.

Appointment of President.

President may take part in debates.

Schedule to 18 & 19

Vic. c. 54. 17 Vic.

No. 41 s. 7. 1 Pring

225.

Quorum division

casting vote.

Schedule to 18 & 19

Vic. c. 54. 17 Vic. No.

41 s. 8. 1 Pring 225.

25. The Governor of the colony shall have power and authority from time to time by an instrument under the great seal of the said colony to appoint one member of the said Legislative Council to be President thereof and to remove him and appoint another in his stead and it shall be at all times lawful for the said President to take part in any debate or discussion which may arise in the said Legislative Council.

26. The presence of at least one-third of the members of the said Legislative Council exclusive of the President shall be necessary to constitute a quorum for the despatch of business and all questions which shall arise in the said Legislative Council shall be decided by a majority of votes of the members present other than the President and when the votes shall be equal the President shall have the casting vote. Provided always that if the whole number of members constituting the said Legislative Council shall not be exactly divisible by three the quorum of the said Legislative Council shall consist of such whole number as is next greater than one-third of the members of the said Legislative Council.

The Legislative Assembly.

Constitution of

Legislative Assembly.

Order in Council

s. 5. 1 Pring 239.

Schedule to 18 & 19

Vic. c. 54. 17 Vic.

No. 41 s. 9.

27. For the purpose of constituting the Legislative Assembly it shall be lawful for the Governor from time to time as occasion shall require in Her Majesty's name by an instrument or instruments under the great seal of the colony to summon and call together a Legislative Assembly in and for the said colony.

Members of Assembly

Schedule to 18 & 19

Vic. c. 54. 17 Vic.

No. 41 s. 10. 1 Pring

221. Order in Council

s. 6. 1 Pring 239.

Duration of Assembly.

Schedule to 18 & 19

Vic. c. 54. 17 Vic. No.

41 s. 21. 1 Pring 227.

Order in Council

s. 7. 1 Pring 239

28. The Legislative Assembly shall consist of members duly qualified according to the Legislative Assembly Act for the time being to be elected by the inhabitants of the said colony having any of the qualifications mentioned in the Electoral Act for the time being.

29. Every Legislative Assembly of the said colony hereafter to be summoned and chosen shall continue for five years from the day of the return of the writs for choosing the same and no longer subject nevertheless to be sooner prorogued or dissolved by the Governor.

General Provisions.

Legislature em-

powered to make

laws regulating sale

and other disposal of

waste lands.

Order in Council

s. 17. 1 Pring 211.

Schedule to 18 & 19

Vic. c. 54. 17 Vic.

No. 41 s. 43. 1 Pring

223.

30. Subject to the provisions contained in the Imperial Act of the eighteenth and nineteenth Victoria chapter fifty-four and of an Act of the eighteenth and nineteenth years of Her Majesty entitled "*An Act to repeal the Acts of Parliament now in force respecting the disposal of the waste lands of the Crown in Her Majesty's Australian Colonies and to make other provisions in lieu thereof*" which concern the maintenance of existing contracts it shall be lawful for the Legislature of this colony to make laws for regulating the sale letting disposal and occupation of the waste lands of the Crown within the said colony.

Duties not to be

levied on supplies for

troops nor any duties

inconsistent with

treaties.

Order in Council

s. 18. 1 Pring 211.

Schedule to 18 & 19

Vic. c. 54. 17 Vic.

No. 41 s. 45. 1 Pring

230.

31. It shall not be lawful for the Legislature of the colony to levy any duty upon articles imported *bona fide* for the supply of Her Majesty's land or sea forces nor to levy any duty impose any prohibition or restriction or grant any exemption from any drawback or other privilege upon the importation or exportation of any articles nor to enforce any dues or charges upon shipping contrary to or at variance with any treaty or treaties concluded by Her Majesty with any foreign power.

Customs duties may

be imposed not differ-

ential though con-

32. Subject to the provisions of this Act and notwithstanding any Act or Acts of the Imperial Parliament now in force to the contrary it shall be lawful for the Legislature of the colony to impose and levy such

such duties of customs as to them may seem fit on the importation into the colony of any goods wares and merchandise whatsoever whether the produce of or exported from the United Kingdom or any of the colonies or dependencies of the United Kingdom or any foreign country Provided always that no new duty shall be so imposed upon the importation into the said colony of any article the produce or manufacture of or imported from any particular country or place which shall not be equally imposed on the importation into the said colony of the like article the produce or manufacture of or exported from all other countries and places whatsoever.

33. All laws statutes and ordinances which at the time when this Act shall come into operation shall be in force within the said colony shall remain and continue to be of the same authority as if this Act had not been made except in so far as the same are repealed and varied hereby and all the courts of civil and criminal jurisdiction within the said colony and all charters legal commissions powers and authorities and all offices judicial administrative or ministerial within the said colony respectively except so far as the same may be abolished altered or varied by or may be inconsistent with the provisions of this Act shall continue to subsist as if this Act had not been made.

Crown Rights and Revenues.

34. All taxes imposts rates and duties and all territorial casual and other revenues of the Crown (including royalties) from whatever source arising within this colony and over which the present or future Legislature has or may have power of appropriation shall form one consolidated revenue fund to be appropriated for the public service of this colony in the manner and subject to the charges hereinafter mentioned.

35. The consolidated revenue fund of this colony shall be permanently charged with all the costs charges and expenses incident to the collection management and receipt thereof such costs charges and expenses being subject nevertheless to be reviewed and audited in such manner as shall be directed by any Act of the Legislature.

36. There shall be payable in every year to Her Majesty Her Heirs and Successors out of the consolidated revenue fund of this colony the several sums not exceeding in the whole the sum of fourteen thousand nine hundred pounds for defraying the expense of the several services and purposes named in the schedules A and B to this Act annexed the said several sums to be issued by the Colonial Treasurer in discharge of such warrant or warrants as shall be from time to time directed under the hand of the Governor and the said Treasurer shall account to Her Majesty for the same through the Lords Commissioners of Her Majesty's Treasury in such manner and form as Her Majesty shall be graciously pleased to direct.

37. The said several sums mentioned in schedules A and B shall be accepted and taken by Her Majesty Her Heirs and Successors by way of civil list instead of all territorial casual and other revenues of the Crown (including all royalties) from whatever source arising within the said colony and to the disposal of which the Crown may be entitled either absolutely or conditionally or otherwise howsoever.

38. Two thousand one hundred pounds in each year shall be payable for pensions to the judges of the Supreme Court out of the sum set apart for pensions in the said schedule B but such last-mentioned sum shall be rateably

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 tary to existing Acts
 of Parliament.
 Order in Council
 s. 19. 1 Pring 211.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 45. 1 Pring
 230.

Force of laws and
 authority of courts
 preserved.
 Order in Council
 s. 20. 1 Pring 241.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 41. 1 Pring
 229.

All duties and
 revenues to form con-
 solidated revenue
 fund.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 47.
 1 Pring 230.

Such fund perma-
 nently charged with
 expenses of collection.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 48.
 1 Pring 230.

Civil list of £16,300
 payable to Her
 Majesty.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 49.
 1 Pring 231.
 See Order in Council
 s. 21 and civil list.
 1 Pring 242 and 25
 Vic. No. 23.
 1 Pring 260.

Civil list to be accom-
 panied by surrender
 of all revenues of the
 Crown.
 Schedule to 18 & 19
 Vic. c. 54. 17 Vic.
 No. 41 s. 50.
 1 Pring 230.

Pensions payable to
 judges of Supreme
 Court.
 Schedule to 18 & 19

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Vic. c. 54. 17 Vic.
No. 41 s. 51.
1 Pring 231.

Consolidated revenue
to be appropriated by
Act of the Legisla-
ture.

Debentures or any
other charges on con-
solidated revenue
fund not to be affect-
ed by such consolida-
tion.

Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 53.
1 Pring 231.

The entire manage-
ment of Crown lands
and all revenues
therein arising to be
vested in the local
Legislature.

Schedule to 18 & 19
Vic. c. 54. 17 Vic.
No. 41 s. 58.
1 Pring 232.

This provision not to
affect any previous
contracts of Her
Majesty respecting
any such lands nor
any vested rights
which have arisen
under 9 & 10 Vic. c.
104 nor any vested
right or interest
which has accrued
under any Order of
Council issued by Her
Majesty in Council in
pursuance thereof.
18 & 19 Vic. c. 54 s. 2.
1 Pring 221.

Schedule thereto 17
Vic. No. 41 s. 58.
1 Pring 231.

Power to order the
attendance of persons.
25 Vic. No. 7 s. 1.
1 Pring 258.

Order to attend to be
notified by summons.
25 Vic. No. 7 s. 2.
1 Pring 258.

rateably or proportionally increased whenever the number of such judges or their respective salaries may or shall be increased.

39. After and subject to the payments to be made under the provisions hereinbefore contained all the consolidated revenue fund hereinbefore mentioned shall be subject to be appropriated to such specific purposes as by any Act of the Legislature of the colony shall be prescribed in that behalf. Provided that the consolidation of the revenues of this colony shall not affect the payment of the annual interest or the principal sums mentioned in any outstanding debentures or other charge upon the territorial revenue as such interest principal or other charge severally becomes due nor shall such consolidation affect the payment of any sum or sums heretofore charged upon the taxes duties rates and imposts now raised levied and collected or to be raised levied and collected to and for the use of this colony for such time as shall have been appointed by any Acts of the said Legislature by which any such charge was authorised.

40. The entire management and control of the waste lands belonging to the Crown in the said Colony of Queensland and also the appropriation of the gross proceeds of the sales of such lands and of all other proceeds and revenues of the same from whatever source arising within the said colony including all royalties mines and minerals shall be vested in the Legislature of the said colony. Provided that nothing herein contained shall affect or be construed to affect any contract or to prevent the fulfilment of any promise or engagement made by or on behalf of Her Majesty with respect to any lands situate within the said colony in cases where such contracts promises or engagements shall have been lawfully made before the time at which this Act shall take effect within this colony nor to disturb or in any way interfere with or prejudice any vested or other rights which have accrued or belong to the licensed occupants or lessees of any Crown lands within or without the settled districts under and by virtue of the Act of the Imperial Parliament passed in the ninth and tenth years of Her Majesty's reign chapter one hundred and four or of any order or orders of Her Majesty in Council issued in pursuance thereof.

Powers and Privileges of Houses of Parliament.

41. Each House of the Parliament of the said colony and any committee of either House duly authorised by the House to send for persons and papers may order any person to attend before the House or before such committee as the case may be and also to produce to such House or committee any paper book record or other document in the possession or power of such person.

42. Any such order to attend or to produce documents before either House shall be notified to the person required to attend or to produce documents by a summons under the hand of the President or Speaker as the case may be and any such order to attend or to produce documents before any such committee shall be notified to the person required to attend or to produce documents by a summons under the hand of the clerk of the House authorised by the chairman of the committee and in every such summons shall be stated the time and place when and where the person summoned is to attend and the particular documents which he is required to produce and such summons shall be served on the person

person mentioned therein either by delivering to him a correct copy of such summons or by leaving a correct copy of the same with some adult person at his usual or last known place of abode in the colony and there shall be paid or tendered to the person so summoned if he shall not reside within five miles of the Legislative Chambers a reasonable sum for his expenses of attendance.

43. A member of either House may be ordered by the House of which he is a member to attend before either House or before any committee of either House without summons.

Attendance of members.
25 Vic. No. 7 s. 3.
1 Pring 259.

44. If any person ordered to attend or produce any paper book record or other document to either House or to any committee of either House shall object to answer any question that may be put to him or to produce any such paper book record or other document on the ground that the same is of a private nature and does not affect the subject of inquiry the President or Speaker or the Chairman of the Committee as the case may be shall report such refusal with the reason thereof to the House who shall thereupon excuse the answering of such question or the production of such paper book record or other document or order the answering or production thereof as the circumstances of the case may require.

Objection to answer questions or produce documents to be reported to the House.
25 Vic. No. 7 s. 4.
1 Pring 259

45. Each House of the said Parliament is hereby empowered to punish in a summary manner as for contempt by fine according to the standing orders of either House and in the event of such fine not being immediately paid by imprisonment in the custody of its own officer in such place within the colony as the House may direct or in Her Majesty's gaol at Brisbane until such fine shall have been paid or until the end of the then existing session or any portion thereof any of the offences hereinafter enumerated whether committed by a member of the House or by any other person—

Houses empowered to punish summarily for certain contempts.
25 Vic. No. 7 s. 5.
1 Pring 259.

Disobedience to any order of either House or of any committee duly authorised in that behalf to attend or to produce papers books records or other documents before the House or such committee unless excused by the House in manner aforesaid.

Refusing to be examined before or to answer any lawful and relevant question put by the House or any such committee unless excused by the House in manner aforesaid.

The assaulting obstructing or insulting any member in his coming to or going from the House or on account of his behavior in Parliament or endeavoring to compel any member by force insult or menace to declare himself in favor of or against any proposition or matter depending or expected to be brought before either House.

The sending to a member any threatening letter on account of his behavior in Parliament.

The sending a challenge to fight to a member.

The offering of a bribe to or attempting to bribe a member.

The creating or joining in any disturbance in the House or in the vicinity of the House while the same is sitting whereby the proceedings of such House may be interrupted.

46. For the purpose of punishing any of the contempts aforesaid the President or Speaker as the case may be is hereby empowered upon the resolution in that behalf of the House to issue his warrant under his

President or Speaker to issue warrant.
25 Vic. No. 7 s. 6.
1 Pring 259.

31 VICTORIA No. 38. hand for the apprehension and imprisonment as aforesaid of any person adjudged by the House guilty of any such contempt if such fine shall not have been paid as aforesaid.

Persons disturbing
proceedings of House
may be arrested with-
out warrant.
25 Vic. No. 7 s. 7.
1 Pring 259.

47. Any person creating or joining in any disturbances in the House during its actual sitting may be apprehended without warrant on the verbal order of the President or Speaker as the case may be and may be kept in the custody of the officer of the House until a warrant can be made out for the imprisonment of such person in manner aforesaid.

Form of warrant.
25 Vic. No. 7 s. 8.
1 Pring 260.

48. Every such warrant shall contain a statement that the person therein mentioned has been adjudged guilty of contempt by the House the President or Speaker whereof shall have issued the same specifying the nature of such contempt in the words of this Act defining the same or in equivalent words and every warrant shall be sufficient from which it can be reasonably collected that the person mentioned therein has been adjudged guilty of any of the contempts aforesaid and no particular form shall be necessary to be observed in such warrant.

Sheriff's constables
and others to assist in
execution of warrant
or verbal order.
25 Vic. No. 7 s. 9.
1 Pring 260.

49. The sheriff and his officers and all constables and other persons are hereby required to assist in the apprehension and detention of any person in pursuance of the verbal order as aforesaid of the President or Speaker as the case may be and also to be aiding and assisting in the execution of any such warrant as aforesaid and where any such warrant directs that the person mentioned therein shall be imprisoned in any gaol the keeper thereof is hereby required to receive such person into his custody in the said gaol and there to imprison him according to the tenor of the warrant.

Doors may be broken
open in executing
warrant.
25 Vic. No. 7 s. 10.
1 Pring 260.

50. It shall be lawful for any person charged with or assisting in the execution of any warrant under the hand of the President or Speaker issued under the authority of this Act to break open in the daytime all doors of places where the person for whose apprehension such warrant was issued is concealed.

House may direct
Attorney-General to
prosecute instead of
proceeding sum-
marily.
25 Vic. No. 7 s. 11.
1 Pring 260.

51. The publishing of any false or scandalous libel of any member touching his conduct as a member by any person other than a member is hereby declared to be a misdemeanor and it shall be lawful for either House to direct the Attorney-General to prosecute before the Supreme Court any such person committing any such misdemeanor and any such person convicted before the said court of any such misdemeanor shall be liable to imprisonment for any period not exceeding two years or to a fine not exceeding one hundred pounds or to both such punishments.

House may direct
Attorney-General to
prosecute for other
contempts.
25 Vic. No. 7 s. 12.
1 Pring 260.

52. It shall be lawful for either House to direct the Attorney-General to prosecute before the Supreme Court any such person guilty of any other contempt against the House which is punishable by law.

Wilfully false answers
how punished.
25 Vic. No. 7 s. 13.
1 Pring 260.

53. If any person before either House or before any committee of either House shall give a wilfully false answer to any lawful and relevant question which shall be put to him during the course of any examination he shall be guilty of a misdemeanor and shall be liable on being convicted thereof to be punished in the same manner as though he had been convicted of wilful and corrupt perjury.

Proceedings criminal
or civil against per-
sons for publication
of papers printed by
order of the Legis-

54. And whereas it is essential to the due and effectual exercise and discharge of the functions and duties of the Legislature that no obstructions or impediments should exist to the publication of such of the reports papers votes and proceedings of the Legislative Council and Assembly

Assembly as the said Council or Assembly may deem fit or necessary to be published and whereas obstructions or impediments to such publication may hereafter arise by means of civil or criminal proceedings being taken against persons employed by or acting under the authority of the said Council or Assembly in the publication of such reports papers votes or proceedings by reason and for remedy whereof it is expedient that protection should be afforded to all persons acting under the authority aforesaid be it enacted That it shall and may be lawful for any person or persons who shall be a defendant or defendants in any civil or criminal proceeding commenced or prosecuted in any manner soever for or on account or in respect of the publication of any such reports papers votes or proceedings by such person or persons or by his her or their servant or servants or by or under the authority of the Legislative Council or Assembly of the said colony to bring before the court in which such proceeding shall have been or shall be so commenced or prosecuted or before any judge of the same first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding a certificate under the hand of the President or Speaker of the said Legislative Council or Assembly or of the clerk of the said Council or Assembly stating that the report paper votes or proceedings as the case may be in respect whereof such civil or criminal proceedings shall have been commenced or prosecuted was published by such person or persons or by his her or their servants by order or under the authority of the said Council or Assembly or a committee thereof together with an affidavit verifying such certificate and such court or judge shall thereupon immediately stay such civil or criminal proceeding and the same and every writ or process issued therein shall be and shall be deemed and taken to be finally put an end to determined and superseded by virtue of this Act.

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lative Council and Assembly to be stayed upon delivery of a certificate and affidavit to the effect that such publication is by order of the said Legislative Council or Assembly.
13 Vic. No. 16 s. 7.
1 Pring 569.

55. In case of any civil or criminal proceeding to be commenced or prosecuted for or on account or in respect of the publication of any copy of such report paper votes or proceedings it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the court or judge such report paper votes or proceedings and such copy with an affidavit verifying such report paper votes or proceedings and the correctness of such copy and the court or judge shall immediately stay such civil or criminal proceedings and the same and every writ of process issued therein shall be and shall be deemed and taken to be finally put an end to determined and superseded by virtue of this Act.

Proceedings to be stayed when commenced in respect of the publication of a copy of the authenticated report &c. on affidavit verifying such copy being laid before the court.
13 Vic. No. 16 s. 8.
1 Pring 570.

56. It shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report paper votes or proceedings to give in evidence under the general issue such report paper votes or proceedings and to show that such extract or abstract was published *bona fide* and without malice and if such shall be the opinion of the jury a verdict of not guilty shall be entered for the defendant or defendants.

In proceedings for printing any extract from or abstract of a paper it may be shown that such extract was *bona fide* made.
13 Vic. No. 16 s. 9.
1 Pring 570.

Commencement and Short Title.

57. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Constitution Act of 1867.*"

Commencement of Act.
Short title.

		Salaries payable whilst the present incumbents are in office.		
		£	s.	d.
Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41. 1 Pring 232.	To be placed at the disposal of Her Majesty for the salary of the Governor if Her Majesty see fit otherwise to revert to the Consolidated Revenue Fund	4,000	0	0
Schedule to 25 Vic. No. 23.	The present Chief Justice	1,500	0	0
1 Pring 261.	The present Puisne Judge	2,000	0	0
	Colonial Secretary	1,000	0	0
	Attorney-General	1,000	0	0
	Colonial Treasurer	1,000	0	0
	Secretary for Lands and Public Works... ..	1,000	0	0
	Governor's Private Secretary	300	0	0
	Public Worship	1,000	0	0

SCHEDULE B.

£ s. d.

Schedule to 18 & 19 Vic. c. 54. 17 Vic. No. 41. 1 Pring 233.	Pensions to judges of the Supreme Court on their ceasing to hold office (until demandable and claimed this amount or any unclaimed portion of it to revert to the Consolidated Revenue Fund) but the sum in this schedule mentioned shall be rateably or proportionally increased whenever the number of such judges or their respective salaries may or shall be increased	2,100	0	0
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ORDER IN COUNCIL empowering the Governor of Queensland to make laws and to provide for the administration of justice in the said colony.

At the Court at Buckingham Palace the sixth day of June 1859. *Present*—The Queen's Most Excellent Majesty in Council.

Provisions of former Acts respecting the allowance and disallowance of Bills reserved.	14. The provisions of the before mentioned Act of the fourteenth year of Her Majesty chapter fifty-nine and of the Act of the sixth year of Her Majesty chapter seventy-six entitled " <i>An Act for the government of New South Wales and Van Diemen's Land</i> " which relate to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure thereon and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty shall apply to Bills to be passed by the Legislative Council and Assembly constituted under the said Act of the Legislature of New South Wales and this Order and by any other Legislative body or bodies which may at any time hereafter be substituted for the present Legislative Council and Assembly.
1 Pring 240.	
17 Vic. No. 41.	
Power of alteration of constitution.	22. The Legislature of the Colony of Queensland shall have full power and authority from time to time to make laws altering or repealing all or any of the provisions of this Order in Council in the same manner as any other laws for the good government of the colony except so much of the same as incorporates the enactments of the fourteenth year of Her Majesty chapter fifty-nine and of the sixth year of Her Majesty chapter seventy-six relating to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty. Provided that every Bill by which any alteration shall be made in the constitution of the Legislative Council so as to render the whole or any portion thereof elective shall be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill shall be laid before both Houses of the Imperial Parliament for the period of thirty days at least before Her Majesty's pleasure thereon shall be signified.
1 Pring 242.	

An Act to Provide for the Augmentation of the Governor's Salary. 24 VICTORIA No. 18.

[24th January, 1861.]

WHEREAS by an Order of the Queen's Most Excellent Majesty Preamble.
in Council bearing date the sixth day of June one thousand eight hundred and fifty-nine and intituled "Order in Council
"empowering the Governor of Queensland to make laws and
"provide for the administration of justice in the said colony"
it was amongst other things declared and ordered that there should
be payable to Her Majesty in every year the several sums specified in
the civil list to the said order annexed and whereas the salary
payable to the Governor by the said civil list is two thousand five
hundred pounds per annum and whereas the said salary is
incommensurate with the duties and responsibilities of the Representa-
tive of Her Majesty in the said colony and it is therefore expedient
that the said salary should be augmented as hereinafter provided
Be it therefore enacted by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council and
Legislative Assembly of Queensland in Parliament assembled and by
the authority of the same as follows—

1. There shall be payable to Her Majesty every year out of the consolidated revenues of the said colony of Queensland in addition to the said sum of two thousand five hundred pounds reserved to Her Majesty in the civil list to the said order annexed the further sum set forth in the schedule hereunto annexed.

2. The said sum of one thousand five hundred pounds shall be payable from the first day of January one thousand eight hundred and sixty.

3. This Act may be cited as the "*Governor's Salary Act 1860.*"

SCHEDULE.

Provided by Civil List annexed to Order in Council	...	...	...	£2,500	Schedule.
Increase of Governor's salary	...	...	...	£1,500	

31 VICTORIA No. 21. **An Act to Consolidate certain Laws relating to the Legislative Assembly.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate certain laws relating to the Legislative Assembly Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

Interpretation.

22 Vic. No. 20 s. 1:
1 Pring 523.

1. In the interpretation of this Act the following words in inverted commas shall have the meaning set against them respectively unless inconsistent with or repugnant to the context—

“Assembly”—The Legislative Assembly of Queensland.

“Speaker”—The Speaker of the Assembly for the time being.

“Election”—The election of any member of the Assembly.

Qualification.

Qualification of mem-
bers of Assembly.

22 Vic. No. 20 s. 8.
1 Pring 525.

2. Any person absolutely free (except as is hereinafter excepted) who shall be qualified and registered as a voter in and for any electoral district within the said colony shall be qualified to be elected a member of the Legislative Assembly for any electoral district within the said colony.

Disqualification and Resignation.

Disqualifying

ministers of religion.
18 & 19 Vic. c. 54.
1 Pring 227.
Schedule 17 Vic. No.
41 s. 20.

3. No person shall be capable of being elected a member to serve in the said Assembly and of sitting and voting therein who shall be a minister of the Church of England or a minister priest or ecclesiastic either according to the rites of the Church of Rome or under any other form or profession of religious faith or worship.

Members of Legisla-
tive Council incapable
of being members of
Legislative Assembly.

18 & 19 Vic. c. 54.
1 Pring 227. schedule
17 Vic. No. 41 s. 17.

4. No person being a member of the Legislative Council shall be capable of being elected or of sitting or voting as a member of the Legislative Assembly.

Crown beneficiaries
disqualified but the
Colonial Secretary
Colonial Treasurer
Attorney-General
and two other officers
may be elected.

24 Vic. No. 2 s. 2.
1 Pring 258.
25 Vic. No. 15 s. 3.
1 Pring 41.

5. Any person holding any office of profit under the Crown or having a pension from the Crown during pleasure or for a term of years shall be incapable of being elected or of sitting or voting as a member of the Legislative Assembly unless he be one of the following official members of the Government (that is to say) the Colonial Secretary Colonial Treasurer and Attorney-General or one of such additional officers not being more than two as the Governor in Council may from time to time by a notice in the *Gazette* declare capable of being elected a member of the said Assembly.

Further disqualifica-
tion of members of
Assembly.

18 & 19 Vic. c. 54.
1 Pring 227. schedule
17 Vic. No. 41 s. 19.
Pensions of officers of
the navy and army
excepted.

6. If any member of the said Assembly shall accept of any office of profit or pension from the Crown during pleasure or for term of years his election shall be thereupon and is hereby declared to be void and a writ shall forthwith issue for a new election Provided that nothing in this Act contained shall extend to any person in receipt only of pay half-pay or a pension as an officer in Her Majesty's navy or army or who shall receive any new or other commission in the navy or army respectively

or

or any increase of pay on such commission or to any of the official members of the Government or other officers referred to in the last preceding clause of this Act who may accept any other office. 31 VICTORIA No. 21.

7. If any member of the Assembly shall for one whole session of the Legislature without the permission of the Assembly entered upon its journals fail to give his attendance in the said House or shall take any oath or make declaration or acknowledgment of allegiance obedience or adherence to any foreign prince or power or do or concur in or adopt any act whereby he may become a subject or citizen of any foreign state or power or become entitled to the rights privileges or immunities of a subject of any foreign state or power or shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors or shall become a public contractor or defaulter or be attainted of treason or be convicted of felony or any infamous crime his seat in such Assembly shall thereby become vacant. Vacating seats of members of Assembly in certain cases. 18 & 19 Vic. c. 54. 1 Pring 227. schedule 17 Vic. No. 41. s. 26.

8. It shall be lawful for any member of the Assembly by writing under his hand addressed to the Speaker of the said House to resign his seat therein and upon the receipt of such resignation by the Speaker the seat of such member shall become vacant. Resignation of seats in the Assembly. 18 & 19 Vic. c. 54. 1 Pring 227. schedule 17 Vic. No. 41 s. 25.

Writs of Election.

9. For the purpose of every general election of members to serve in the Assembly and also in the case of any vacancy of a seat by death written resignation to the Governor or otherwise after such general election and before the meeting of Parliament the writs for the several electoral districts shall be issued by the Governor. Governor to issue writs in certain cases. 22 Vic. No. 20 s. 29. 1 Pring 530.

10. When and so often as a vacancy shall occur in the Assembly upon a resolution by the Assembly declaring such vacancy and the causes thereof the Speaker shall cause a writ to be issued for supplying such vacancy. Provided that in all cases of a vacancy caused by death or resignation the Speaker may issue such writ without such preceding resolution when the Assembly is not in session or when such vacancy occurs during any adjournment for a longer period than seven days. Speaker to cause issue of writs to fill vacancies. 22 Vic. No. 20 s. 30. 1 Pring 530.

11. If at the time of the occurrence of any such vacancy caused by death or resignation there be no Speaker and the Assembly be not in session or if the Speaker be absent from the colony the Governor shall if satisfied of the existence of such vacancy issue a writ for the election of a member to serve in the seat so vacated. If no Speaker Governor to issue writs. 22 Vic. No. 20 s. 31. 1 Pring 530.

Speaker Quorum and Competency of Assembly.

12. The members of the Legislative Assembly shall upon the first assembling after every general election proceed forthwith to elect one of their number to be Speaker and in case of his death resignation or removal by a vote of the said Legislative Assembly the said members shall forthwith proceed to elect another of such members to be such Speaker and the Speaker so elected shall preside at all meetings of the said Legislative Assembly except as may be provided by the standing rules and orders hereinafter authorised to be made. Election of the Speaker. 18 & 19 Vic. c. 54. 1 Pring 227. schedule 17 Vic. No. 41 s. 22.

13. The presence of at least sixteen members of the Legislative Assembly exclusive of the Speaker shall be necessary to constitute a meeting of the said Legislative Assembly for the despatch of business and Quorum division and casting vote. 18 & 19 Vic. c. 54. 1 Pring 227. schedule No. 41 s. 23.

31 VICTORIA No. 21. and all questions (except as by law is excepted) which shall arise in the said Assembly shall be decided by the majority of votes of such members as shall be present other than the Speaker and when the votes shall be equal the Speaker shall have the casting vote.

23 Vic. No. 1 ss. 1 and 2. 1 Pring 257. *Constitution Act of 1867* ss. 9 and 10.

Assembly may proceed to business although writs not exceeding five shall not have been returned.

18 & 19 Vic. c. 54. 1 Pring 227. schedule 17 Vic. No. 41 s. 24.

14. Upon any general election the Legislative Assembly shall be competent to proceed to the despatch of business at the time appointed by the Governor for that purpose notwithstanding that any of the writs of election (not exceeding five) shall not have been returned or that in any of the electoral districts the electors shall have failed to elect a member to serve in the said Assembly.

Election Committee.

Appointment of Election Committee may be disapproved of by the Assembly. 22 Vic. No. 20 s. 63. 1 Pring 536.

15. In the first session of every Assembly and within seven days after the election of a Speaker and in every subsequent session within seven days after the commencement thereof or in either case at any later period with the leave of the Assembly the Speaker shall by warrant under his hand appoint seven members of the Assembly against whose return no petition is then pending and none of whom is a party to any petition complaining of any election or return to be members of a committee to be called "The Committee of Elections and Qualifications" And every such warrant shall be laid on the table of the Assembly and if not disapproved by the Assembly in the course of the three next days on which the Assembly meets for the despatch of business shall take effect as an appointment of such committee Provided that every member who shall become a party to any petition complaining of an undue election or return or respecting whose return qualification or disqualification an inquiry is pending shall for the time be disqualified to serve on such committee.

Proceedings on disapproval by the Assembly. 22 Vic. No. 20 s. 67. 1 Pring 536.

16. If the Assembly disapprove of any such warrant the Speaker shall on or before the third day on which the Assembly meets after such disapproval lay upon the table of the Assembly a new warrant for the appointment of seven members qualified as aforesaid and so from time to time until seven members have been appointed by a warrant not disapproved by the Assembly Provided that the disapproval of any warrant may be either general in respect of the constitution of the whole committee or special in respect of any particular member named in the warrant and that the Speaker may if he think fit name in the second or any subsequent warrant any of the members named in any former warrant whose appointment has not been so specially disapproved of.

Duration of office of members of committee. 22 Vic. No. 20 s. 68. 1 Pring 536.

17. After the appointment of the said committee every member appointed shall continue to be a member thereof until the end of that session or until he cease to be a member of the Assembly or unless and until the committee report that he is disabled by continued illness from attending the committee or until the committee be dissolved as hereinafter provided or until he resign his appointment (which he may do by letter to the Speaker) but which resignation shall not take effect until the appointment of another member in his place.

Resolution of House to dissolve committee. 22 Vic. No. 20 s. 69. 1 Pring 537.

18. If the said committee at any time report that by reason of the continued absence of more than two of its members or by reason of irreconcilable difference of opinion the committee are unable to proceed satisfactorily in the discharge of their duties or if the Assembly resolve that the said committee be dissolved the same shall be forthwith dissolved and every re-appointment of the said committee after the dissolution thereof

Re-appointment.

as well also as every appointment to supply a vacancy in the committee by resignation or otherwise shall be made by the Speaker by warrant under his hand laid upon the table of the Assembly on or before the third day on which the Assembly meets after the dissolution of the committee or notification of the vacancy made to the Speaker as the case may be. And such warrant shall be subject to the disapproval of the Assembly in like manner as is hereinbefore provided in the case of the appointment of the first committee. And upon any re-appointment of the said committee the Speaker may if he think fit re-appoint any of the members of the former committee who are then not disqualified to serve thereon. And every such new committee or new member shall have power to take up and continue the business which may have been pending at the time of the dissolution or vacancy as aforesaid in the same manner as might have been done by the committee as previously constituted and composed.

19. The Speaker shall appoint the time and place of the first meeting of the said committee and the committee shall meet at the time and place so appointed but no member shall act upon the said committee until he shall have been sworn at the table of the Assembly by the clerk well and truly to try and determine the matter of any petition and other question referred to the said committee and a true judgment to give according to the evidence and truly and faithfully to perform the duties appertaining to a member of the said committee to the best of his judgment and ability without fear or favor and the said committee shall not be competent to transact any business unless at the least five members thereof shall be present together.

Time of meeting.
22 Vic. No. 20 s. 70.
1 Pring 537.

Oath of committee men.

Quorum.

20. The said committee shall have power to adjourn their sittings from time to time as they shall think proper. Provided that the interval of adjournment shall not in any instance exceed seven days unless by leave first obtained from the Assembly upon motion (without notice) and special cause assigned for such adjournment. And in case five members shall not have met together within one hour of the time appointed for an original or adjourned meeting it shall be competent to the members present to adjourn within the limits and subject to the restrictions aforesaid. And the said committee shall select their own chairman from time to time and shall have power to regulate the form and manner of their own proceedings. Provided that such proceedings shall be conducted openly except when the committee shall think it necessary to deliberate among themselves before or after hearing evidence and argument if offered and all questions before the committee shall be decided by a majority of voices and whenever the voices are equal the chairman shall have a second or casting voice and no member of the committee shall refrain from voting on any question on which the committee may divide. And the said committee shall be attended by one of the clerks of the Assembly and such clerk shall make a minute of all proceedings of the committee in such form and manner as shall be from time to time directed by the said committee and a copy of the minutes so kept shall be laid from time to time before the Assembly.

Powers of adjournment of committee.
22 Vic. No. 20 s. 71.
1 Pring 537.

Election of chairman.

Majority to decide.

Casting vote.

Minutes of proceedings.

21. The said committee shall have power to inquire into and determine upon all election petitions and upon all questions which may be referred to them by the Assembly respecting the validity of any election or return of any member to serve in the Assembly whether the dispute relating to such election or return arise out of an error in the return of

General powers of committee.
22 Vic. No. 20 s. 72.
1 Pring 533.

the

31 VICTORIA No. 21. the returning officer or out of the allegation of bribery or corruption against any person concerned in any election or out of any other allegation calculated to affect the validity of such election or return and also upon all questions concerning the qualification or disqualification of any person who shall have been returned as a member of the Assembly And in the trial of any such questions the committee shall be guided by the real justice and good conscience of the case without regard to legal forms and solemnities and shall direct themselves by the best evidence they can procure or which is laid before them whether the same be such evidence as the law would require or admit in other cases or not Provided that the said committee may receive or reject as they may deem fit any evidence tendered to them.

Powers in respect of witnesses affidavits and documentary evidence.
22 Vic. No. 20 s. 73.
1 Pring 538.

Punishment of witnesses for contempt disobedience or mendacity.

22. The said committee shall have power to direct the attendance of witnesses and to examine them upon oath (which oath it shall be competent for any member of the said committee to administer) and also to send for and examine papers records and other documentary evidence and it shall be competent to the said committee if they shall think fit to receive affidavits relative to any of the matters referred to them taken before any justice (which affidavits such justice is hereby authorised to take) and if any person summoned by the committee shall disobey such summons or shall refuse or neglect to produce any papers records or other documentary evidence relating to or affecting the matter under investigation which shall have been sent for by the said committee or shall refuse to submit himself to examination or shall give false evidence or prevaricate or otherwise misconduct himself in giving or refusing to give evidence he shall be deemed guilty of a misdemeanor and be liable accordingly and any person wilfully or knowingly giving false evidence before the said committee or a quorum thereof or in any such affidavit shall be deemed guilty of wilful and corrupt perjury.

Decisions of committee and their effect.
22 Vic. No. 20 s. 74.
1 Pring 538.

Committee may report to the Assembly their resolutions upon other matters.

23. The said committee shall determine finally on all questions referred to them and if they shall determine and report to the Assembly that a person was not duly elected who was returned as elected by the returning officer the person so declared not to be duly elected shall cease to be a member of the Assembly and if they shall determine and report any party to have been duly elected who was not returned by the returning officer the person so declared shall be sworn a member of the Assembly and take his seat accordingly and if the said committee shall declare any election to have been wholly void or shall declare any sitting member to be unqualified or disqualified the Speaker may issue a new writ for the holding of another election and the person thereafter elected and duly returned shall be the member for the electoral district concerned and if the committee shall come to any resolution other than the determination abovementioned they shall if they think proper report the same to the Assembly for its opinion at the same time that they inform the Assembly of such determination and the Assembly may confirm or disagree with such resolution and make such order thereon as shall seem proper.

Election Petition.

Petition against sitting member or return of writ.
22 Vic. No. 20 s. 75.
1 Pring 538.

24. Every petition complaining of the undue election or return of a member to serve in the Assembly or complaining that no return has been made according to the requisition of the writ issued for the election of

of a member to serve in the Assembly or complaining of any special matter 31 VICTORIA No. 21.
 contained in any such return shall be subscribed by some person who voted or had a right to vote at the election to which the same relates or by some person claiming to have had a right to be returned or elected thereat or alleging himself to have been a candidate at the election and shall in the case of a general election be addressed to the Governor and in the case of elections to supply vacancies shall be addressed to the Speaker and shall be presented to the Governor or Speaker within eight weeks after the day of the return of the writ to which such petition shall relate And every such petition shall be forthwith notified in the *Gazette* and shall as soon as conveniently may be after such presentation be laid by the Governor or the Speaker before the Assembly and shall by the Assembly be referred to the "Committee of Elections and Qualifications" either forthwith or as soon as the said committee shall have been duly appointed and confirmed.

25. All persons subscribing any such petition shall be deemed to be parties to the reference and the sitting member to whose election any such petition relates or any person who voted or who had a right to vote thereat or any person complained against in any such petition may within four weeks after presentation thereof by notice in writing to the Speaker be admitted as a party to support or to oppose the same or to defend the return of the sitting member as the case may be and every person so admitted shall be deemed to be a party to the reference.

Parties to petition.
 22 Vic. No. 20. s. 79.
 1 Pring 539.

26. It shall be competent to the Assembly upon any petition subscribed and presented as aforesaid to refer such petition and the question thereby raised to the said committee and the Assembly shall also have the power upon the like petition to refer to the said committee all questions respecting bribery or corruption alleged to have been committed at any election at any time within twelve months after such election notwithstanding that the period in either of the above cases shall have elapsed for a petition against the election or the return thereof according to the provisions hereinbefore in that behalf contained.

Assembly may refer
 petition to committee.
 22 Vic. No. 20 s. 76.
 1 Pring 539.

Costs and Penalties.

27. Before presenting any such petition as aforesaid to the Governor or Speaker the person by whom the same shall be subscribed shall pay into one of the banks regulated by law within the said colony or into a branch thereof a sum of one hundred pounds to the credit of the Speaker in relation to the said petition which sum shall be payable towards the costs of the petition as hereinafter regulated and shall be liable to be withdrawn upon the order of the Speaker either for the purpose of such payment or for the purpose of restoring the same to the petitioner wholly or in part as the case may require.

Deposit for costs of
 petition.
 22 Vic. No. 20 s. 77.
 1 Pring 539.

28. Every such petition shall have annexed thereto a bank deposit receipt for the sum of one hundred pounds so deposited and shall contain a recital of the fact and particulars of such deposit and any petitioner who shall wilfully annex to any such petition a false receipt or who shall wilfully make in any such petition any false recital of such fact and particulars shall be deemed guilty of forgery.

Receipt for deposit
 to accompany peti-
 tion.
 22 Vic. No. 20 s. 78.
 1 Pring 539.

29. The parties to any such reference may at any time after presentation of the petition so referred jointly or severally withdraw their support or opposition as the case may be by written notice to that effect under their hands or under the hand of their agent to the Speaker and also

Parties withdrawing
 liable to costs and
 expenses.
 22 Vic. No. 20 s. 80.
 1 Pring 539.

to

31 VICTORIA No. 21. to the sitting member whose election or return has been complained of or his agent and also to the adverse parties or their agents and in all such cases the parties so withdrawing shall be liable to the payment of all such costs and expenses incurred by any of the adverse parties as the committee in its discretion shall deem reasonable and just.

Award of costs and expenses.
22 Vic. No. 20 s. 81.
1 Pring 539.

30. It shall be lawful for the committee to determine and report to the Assembly upon all petitions so referred and in all cases to award payment of such costs or expenses incurred by any of the parties as the committee in its discretion shall deem reasonable and just and to name the parties in each case who shall be liable for such payments and the parties (if any) to whom such payments are to be made.

Sitting member liable for costs and expenses in certain cases.
22 Vic. No. 20 s. 82.
1 Pring 540.

31. Whenever no adverse party shall have been admitted as aforesaid and it shall appear to the committee that the sitting member whose election has been complained of or his authorised agent has been guilty of vexatious or corrupt conduct in respect of the election to which the petition relates such member shall be liable for the payment of all such costs and expenses incurred by any of the parties supporting the petition as the committee in its discretion shall deem reasonable and just.

Petitioners liable to penalties.
22 Vic. No. 20 s. 83.
1 Pring 540.

32. Whenever it shall appear to the committee that a petition so referred to them was frivolous or vexatious or altogether groundless or not sufficiently sustained by evidence it shall be lawful for the said committee to impose upon any of the parties supporting the petition such penalty (not exceeding fifty pounds) as the committee shall in their discretion deem reasonable and just and such penalty shall be paid by any such parties named by the committee to the clerk of the Assembly and may be recovered by the said clerk in the same manner as all costs and expenses awarded by the committee are hereinafter directed to be recovered. And the money so recovered shall after deducting costs and expenses necessary for the recovery thereof be paid to the Colonial Treasurer for the public uses of the colony and in support of the Government thereof.

Costs and expenses how to be certified.
22 Vic. No. 40 s. 84.
1 Pring 540.

33. The said committee shall upon application made to them deliver to any witnesses summoned before the committee or to any other person entitled under the provisions of this Act to costs and expenses or to the clerk of the Assembly in case any penalty shall have been awarded a certificate thereof signed by the chairman of the said committee expressing the amount of the costs and expenses allowed or of the penalty awarded with the name of the party liable to pay the same and the name of the party entitled to receive the same and such certificate shall be conclusive evidence for all purposes whatever as well of the amount of the demand as of the title of the party therein named in that behalf to recover the same from the party therein stated to be liable to the payment thereof.

Recovery of costs.
22 Vic. No. 20 s. 85.
1 Pring 540.

34. The Speaker may by order under his hand direct the payment of the said sum of one hundred pounds deposited according to the provisions hereinbefore contained or a sufficient portion or proportionate part thereof to any party who by such certificate shall appear to be entitled to recover costs and expenses or any penalty as against the person by whom such deposit was made and the party entitled to any such costs expenses or penalty under such certificate may recover the same or so much thereof as shall not be paid out of any such deposit from the party liable to pay the same and if the party liable to pay such costs expenses or penalty shall not upon demand being made within seven days thereafter pay the same the

Speaker

Speaker shall by warrant under his hand directed to the sheriff of the said colony command the said sheriff to levy for the amount named in such warrant upon the lands goods and chattels of the party liable to pay the same and thereupon the said sheriff shall forthwith levy for the said amount and when the same shall be recovered pay over the same to the party entitled thereto and any person from whom the amount of such costs expenses or penalty shall have been recovered or who shall have paid the same on demand thereof shall be entitled to recover in any court from the other persons (if such there be) who are liable to the payment of the same a proportionate share thereof according to the number of persons so liable and according to the extent of the liability of each person. Provided that in every case in which the Committee of Elections and Qualifications shall finally determine and report to the Assembly upon any such petition without making any award as to costs or expenses or imposing any penalty the Speaker shall upon demand of the depositor return to him or his agent the sum of one hundred pounds so deposited as aforesaid.

31 VICTORIA No. 21.

Proportionate recovery against persons jointly liable.

Limitation of Time.

35. No prosecution or other legal proceeding whatsoever for any offence alleged to be committed or for the recovery of any penalty alleged to be incurred under this Act shall be commenced after the expiration of six months from the commission of such offence or the incurring of such penalty.

Limitation of prosecutions.

22 Vic. No. 20 s. 86.

1 Pring 540.

Holidays.

36. Whenever any matter or thing shall by this Act be directed to be done or to take place on a certain day and that day happen to be Sunday Good Friday Christmas Day or any public holiday such matter or thing may be done or take place on the next day not being any such as aforesaid. And all further changes of time rendered necessary by any such alteration may also lawfully be made.

Postponement of things chanceing to fall on Sundays or holidays.

22 Vic. No. 20 s. 87.

1 Pring 541.

Commencement and Short Title.

37. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Legislative Assembly Act of 1867.*"

Commencement of Act.

Short title.

31 VICTORIE No. 3.

An Act to Consolidate the Laws relating to the Number of Members of the Legislative Assembly and to the Electoral Districts whereby such Members are returned.

[26th November, 1867.]

Preamble.

WHEREAS it is expedient to consolidate the laws relating to the number of members of the Legislative Assembly and to the electoral districts whereby such members are returned Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Number of members.
22 Vic. No. 20. 1
Pring 524. Schedule
to 18 & 19 Vic. c.
54. 17 Vic. No. 41
s. 10. 1 Pring 225.

Division of the
colony into electoral
districts.
Sir W Denison's Pro-
clamation. 1 Pring
243.
28 Vic. No. 9 s. 1.
3 Pring 219.

1. The Legislative Assembly of Queensland shall consist of thirty-two members.

2. The colony shall be divided into the following electoral districts returning respectively the number of members set opposite to them in the following table—

The electoral district of Brisbane shall return three members	...	3
The electoral district of South Brisbane shall return one member	...	1
The electoral district of Fortitude Valley shall return one member	...	1
The electoral district of Ipswich shall return three members	...	3
The electoral district of Warwick shall return one member	...	1
The electoral district of East Moreton shall return two members	..	2
The electoral district of West Moreton shall return three members	...	3
The electoral district of Western Downs shall return two members	...	2
The electoral district of Eastern Downs shall return one member	...	1
The electoral district of Northern Downs shall return one member	...	1
The electoral district of Maranoa shall return one member	...	1
The electoral district of Burnett shall return two members	...	2
The electoral district of Wide Bay shall return one member	...	1
The electoral district of Port Curtis shall return one member	...	1
The electoral district of Leichhardt shall return two members	...	2
The electoral district of Kennedy shall return one member	...	1
The electoral district of Mitchell shall return one member	...	1
The electoral district of Warrego shall return one member	...	1
The electoral district of Clermont shall return one member	...	1
The electoral district of Drayton and Toowoomba shall return one member	...	1
The electoral district of Rockhampton shall return one member	...	1
The electoral district of Maryborough shall return one member	..	1

TOTAL 32

And the boundaries of the several Electoral Districts of the Colony shall be those described in the schedule to this Act annexed.

Commencement and Short Title.

3. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Electoral Districts Act of 1867.*"

Commencement of
Act.

Short Title.

SCHEDULE

SCHEDULE.

31 VICTORIAE No. 3.

No. 1.

ELECTORAL DISTRICT OF BRISBANE.

Commencing on the left bank of the Brisbane River at the southern extremity of the north-west side of a road dividing John McConnell's 13 acres 1 rood and 2 perches from his 21 acres 3 roods and 4 perches and bounded on the south-east by that road north-easterly to the south corner of J. C. Wickham's 30 acres thence on the north-east by the south-west boundary of Wickham's 30 acres and the south-west side of the road which forms the south-west boundary of James Gibbon's 86 acres and 33 acres and of T. Shannon's 13 acres and 19 perches to the north corner of Frederick Hingston's 5 acres and 3 roods on the north-west by the north-west boundary of Hingston's 5 acres and 3 roods south-westerly and by its continuation which forms the north-west boundaries of William Thornton's 5 acres and 1 rood T Adams' 4 acres and John McConnell's 2 acres 2 roods and 27 perches to the north-east boundary of Henry Watson's 1 acre and 32 perches and by the north-east and north-west boundaries of that land north-westerly and south-westerly to its western corner thence on the north by the road bearing west and forming the south boundaries of George Poole's 1 acre and 34 perches James Gibbon's 1 acre 3 roods and 3 perches and other lands to the road along the summit of the ridge dividing Hanley's Valley from Spring Hollow by that road to the ridge forming the southern watershed of York's Hollow and by that ridge to a point north by compass from the north-east corner of the Jews' burial ground for North Brisbane on the west by a line bearing south and forming partly the eastern boundary lines of the Jews' Roman Catholics' Presbyterians' and Aborigines' burial grounds to the north corner of D R. Somerset's 2 acres and 38 perches thence by the south-west side of the road forming the north-east boundary of that land to a small creek which forms its south boundary and by that creek to the Brisbane River on the south-west by the north bank of the Brisbane River downwards to the nearest point to the north-west corner of W. R. H. Weekes' 5 acres 1 rood and 24 perches on Kangaroo Point by a line south-easterly to that corner and by Leopard street forming the south-west boundaries of Weekes' 5 acres 1 rood and 24 perches John McCabe's 5 acres 1 rood and 24 perches and William Kent's 6 acres 3 roods and 4 perches to the road being the easterly continuation of Vulture street in South Brisbane on the south by that road easterly to the south-east corner W. Kent's 6 acres 1 rood and 13 perches and on the east by the road bounding Kent's land on the east northerly to the Brisbane River by its extension northerly across that river and by the left bank of the river upwards to the point of commencement.

No. 2.

ELECTORAL DISTRICT OF SOUTH BRISBANE.

Commencing on the right bank of the Brisbane River at the north extremity of the west side of Boundary street and bounded thence on the west by that street southerly to Vulture street on the south by the south side of Vulture street and the road in continuation thereof easterly to the south-west corner of William Kent's 6 acres 3 roods and 4 perches on the east by Leopard street forming the south-west boundaries of Kent's 6 acres 3 roods and 4 perches John McCabe's 5 acres 1 rood and 24 perches and W. R. H. Weekes' 5 acres 1 rood and 24 perches to the north-west corner of the last-mentioned portion and on the north by a line thence north-westerly to the Brisbane River and by that river upwards to the point of commencement.

No. 3.

ELECTORAL DISTRICT OF FORTITUDE VALLEY.

Commencing at the western corner of Henry Watson's 1 acre and 32 perches and bounded thence on the south by the road bearing west and forming the south boundaries of George Poole's 1 acre and 34 perches James Gibbon's 1 acre 3 roods and 3 perches and other lands to the road along the summit of the ridge dividing Hanley's Valley from Spring Hollow and by that road to the ridge forming the southern watershed of York's Hollow thence on the north-west by the ridge dividing York's Hollow from Spring Hollow and a line north-easterly to the north side of York's Hollow on the north-east by lines down the north side of York's Hollow Swamp south-easterly in all 37 chains and 24 links to the bridge on the Eagle Farm Road and thence by the south-west side of the

31 VICTORIA No. 3. the road forming the south-west boundary of T. Shannon's 13 acres and 19 perches to the north corner of Frederick Hingston's 5 acres and 3 roods and on the south-east by the north-west boundary of Hingston's 5 acres and 3 roods south-westerly and by its continuation which forms the north-west boundaries of William Thornton's 5 acres and 1 rood T. Adams' 4 acres and John McCennell's 2 acres 2 roods and 27 perches to the north-east boundary of Henry Watson's 1 acre and 32 perches and by the north-east and north-west boundaries of that land north-westerly and south-westerly to its western corner the point of commencement.

No. 4.

ELECTORAL DISTRICT OF IPSWICH.

28 Vic. No. 9 schedule
No. 4. 3 Pring 221.

Commencing at the north-west corner being the junction of Mehe Creek with the Bremer River and bounded on part of the north by a line bearing east seventy-one chains and five links to the Bremer River on the remainder of the north by the north bank of the Bremer River downwards to a point bearing north forty-two degrees east from the termination on the opposite bank of the west side of a road in the eastern suburbs which divides James Gibbon's 9 acres 2 roods and 20 perches and Robert Carter's 10 acres and 1 rood thence across the river to that road on the east by the said road southerly to the south-east corner of the reserve for recreation on the south by a line bearing west to Deebling Creek on the west by Deebling Creek downwards to its confluence with the Bremer River and by that river downwards to the point of commencement.

No. 5.

ELECTORAL DISTRICT OF WARWICK.

28 Vic. No. 9 schedule
No. 5. 3 Pring 222.

Commencing on Swan Creek at the junction of Jack Smith's Gully and bounded thence on the south by Swan Creek upwards in an easterly direction to the north corner of number twenty-eight of Canning Downs pre-emptive measurements containing 667 acres thence by part of the north-east boundary of that portion bearing south-east one mile then by a line parallel to Swan Creek north-easterly four miles on the north-east by a line north-west to Freestone Creek on the north by Freestone Creek downwards to the east corner of Marshall and Deuchar's pre-emptive purchase number eighteen of 1123 acres Glengallan thence by a line bearing south-west till it meets the northerly prolongation of the east boundary line of Marshall and Deuchar's pre-emptive purchase of 715 acres on Campbell's Gully thence by a line bearing south to Campbell's Gully and by Campbell's Gully downwards to the south-east corner of portion number 184 containing fifty-one acres in the parish of Warwick thence by the eastern boundaries of portions numbers 184 and 360 bearing north to the north-east corner of the said portion number 360 thence by a line bearing west five miles to the east boundary of Massie and Walker's pre-emptive purchase of 519 acres Toolburra thence by part of the east boundary of that portion and a line bearing south to the Condamine River thence by the Condamine River downwards to the north-west corner of portion number 230 containing 91 acres in the parish of Warwick on the west by the west boundaries of portions numbers 230 240 252 259 and a line south to Sandy Creek thence by Sandy Creek upwards to the south-west corner of portion 487 in the parish of Warwick on the south by a line bearing east seven and a-half miles thence by a line bearing north to the confluence of Rosenthal Creek with the Condamine River thence by the Condamine River downwards and by the western boundary of Leslie's pre-emptive purchase of 640 acres Canning Downs thence by the northern and part of the eastern boundaries of that portion by the northern boundaries of another portion of 640 acres and of 164 acres and 339 acres Canning Downs bearing east to Swan Creek and thence by Swan Creek upwards to the point of commencement.

No. 6.

ELECTORAL DISTRICT OF EAST MORETON.

28 Vic. No. 9 schedule
No. 6. 3 Pring 222.

Commencing at Point Danger and bounded thence on the south by the range dividing the waters of the Logan and other rivers from those of the Clarence Richmond and Tweed Rivers on the west by the range dividing the waters of the Logan River from those of the Teviot Brook and the range dividing the waters of that brook and Crow's Creek to a point
in

in the latter due south of Kent's Peak thence by a line to Kent's Peak and by the Mount 31 VICTORIA No. 3. Flinders' Range to Mount Goolman thence by a line north-east rly to the head of Woogaroo Creek and by that creek to its confluence with the Brisbane River thence by a spur of D'Aguilar's Range and by that range northerly to the range forming the northern watershed of the Mooroochydore River and by that watershed easterly to the sea and on the east by the seacoast southerly to Point Danger and including all the islands adjacent to the said seacoast (exclusively however of the electoral districts of Brisbane South Brisbane and Fortitude Valley as herein described).

No. 7.

ELECTORAL DISTRICT OF WEST MORETON.

Bounded on the north by the range dividing the waters of the Burnett and Mary 28 Vic. No. 9 schedule Rivers from those of the Brisbane River from the Great Dividing Range to D'Aguilar's No. 7. 3 Pring 222. Range thence on the east by D'Aguilar's Range southerly and a spur from that range to the confluence of Woogaroo Creek with the Brisbane River and by Woogaroo Creek to its source thence by a line south-westerly to Mount Goolman and by the Mount Flinders' Range to Kent's Peak thence by a line bearing south to the range dividing the waters of Teviot Brook from those of Crow's Creek and by that range and the range dividing the waters of Teviot Brook and the Logan River to the range dividing the waters of the Logan and other rivers from those of the Clarence Richmond and Tweed Rivers on the south by that range to the Great Dividing Range and on the west by that range to the range dividing the waters of the Burnett and Mary Rivers from those of the Brisbane River aforesaid (exclusively however of the electoral districts of Ipswich Drayton and Toowoomba as herein described).

No. 8.

ELECTORAL DISTRICT OF WESTERN DOWNS.

Commencing at the junction of Canal Creek with the Broadwater and bounded 28 Vic. No. 9 schedule thence on the south by a line bearing east to the Condamine River thence by the Condamine No. 8. 3 Pring 222. River upwards to the confluence of Clifton Creek thence by the range dividing the waters of Clifton Creek from those of Dalrymple Creek north-easterly to the Main Range on the east by the Main Range northerly to a point bearing east-north-easterly from the south-east corner of Tooth's pre-emptive purchase number 86 at Jondaryan thence on the north by a line bearing west-south-westerly crossing Oaky Creek to the said south-east corner and in continuation of said line to the confluence of the north branch with the Condamine River and again in continuation of the same line west-south-westerly to the range forming the watershed between the Condamine and Weir Rivers thence by the said range and the range forming the watershed between the Condamine and Mooni Rivers south-westerly to the western boundary of the pastoral district of Darling Downs thence by a south line to the north-east corner of Blacks' Camp Run and by the eastern boundaries of said run and of Ungabilla and Pooloon Runs then by the north boundary of Wagganba Run east to the north-east corner then by the east boundary of Wagganba Lower Teelba East Teelba and Brigalow Scrub to the Mooni River at a tree marked broad-arrow over DDM and by a continuation of said line south following the east boundaries of Brigalow Scrub Ula Ula and North Geradla Runs to the north boundary of Gurardora Run thence by that boundary east one mile to the east corner of said run and by a south line to the Barwan or Macintyre River on the south by the Barwan or Macintyre River upwards to the confluence of Macintyre Brook thence on the east by a line north to the range dividing the waters of the Macintyre Brook from those falling into the Weir River thence by that range north-easterly to Mount Denville or Milmerran thence by a spur range to the junction of Canal Creek with the Broadwater the point of commencement (exclusively however of the electoral district of Drayton and Toowoomba as herein described).

No. 9.

ELECTORAL DISTRICT OF EASTERN DOWNS.

Commencing at the junction of Canal Creek with the Broadwater and bounded 28 Vic. No. 9 schedule thence on the north by a line bearing east to the Condamine River thence by the Condamine No. 9. 3 Pring 223. River upwards to the confluence of Clifton Creek thence by the range dividing the waters of
 of

31 VICTORIA No. 3. of Clifton Creek from those of Dalrymple Creek north-easterly to the Main Range on the east by the Main Range southerly to the south boundary of the Colony of Queensland on the south-east and south-west by that boundary westerly to the confluence of the Macintyre Brook with the Macintyre or Dumaresq River on the west by a line north to the range dividing the waters of Macintyre Brook from those falling into the Weir River thence by that range north-easterly to Mount Domville or Milmerran thence by a spur range to the junction of Broadwater with Canal Creek the point of commencement (exclusively however of the electoral district of Warwiek as herein described).

No. 10.

ELECTORAL DISTRICT OF NORTHERN DOWNS.

28 Vic. No. 9 schedule
No. 10. 3 Pring 2-3. Commencing at the Condamine River at the confluence of the North Branch and bounded thence on the south by a line bearing east-north-easterly to the south-east corner of Tooth's pre-emptive purchase number 86 at Jondaryan thence by a continuation of the said line crossing Oaky Creek to the Great Dividing Range between the eastern and western waters on the east and on the north by the said Great Dividing Range northerly and westerly to the range forming the western watershed of Dogwood Creek and its tributaries on the west by that watershed southerly to the confluence of Dogwood Creek with the Condamine River thence by the Condamine River upwards to the eastern boundary of the Murilla Run then by said boundary and the eastern boundaries of the Dunwoodie and Woodstock runs southerly to the range forming the watershed between the Balonne or Condamine and Mooni Rivers on the south by that range north-easterly and by the range forming the watershed between the Condamine and Weir Rivers southerly to a point bearing west-south-westerly from the confluence of the Condamine River and the North Branch the point of commencement.

No. 11.

ELECTORAL DISTRICT OF MARANOA.

28 Vic. No. 9 schedule
No. 11. 3 Pring 223. Commencing at the confluence of Dogwood Creek with the Balonne or Condamine River and bounded thence on the east by the Condamine River upwards to the eastern boundary of the Murilla Run then by said boundary and the eastern boundaries of the Dunwoodie and Woodstock runs southerly to the range forming the watershed between the Balonne and Mooni Rivers thence by that watershed easterly thence by a south line to the north-east corner of Blacks' Camp Run and by the eastern boundaries of said run and of Ungabilla and Pooloon runs then by the north boundary of Wagganba Run east to the north-east corner thence by the east boundary of Wagganba Lower Teelba East Teelba and Brigalow Scrub to the Mooni River at a tree marked broad-arrow over DDM and by a continuation of said line south following the east boundaries of Brigalow Scrub Ula Ula and North Geradla Runs to the north boundary of Gurardora Run thence by that boundary east one mile to the east corner of said run and by a south line to the Barwan River at a tree marked broad-arrow over DDWM on the south by the Macintyre or Barwan River downwards to the 29th parallel of south latitude and by that parallel true west to the watershed between the Warrego River and Mungallala Creek thence on the west by that watershed northerly to Mount Elliott and by the watershed between the Maranoa and Warrego Rivers onwards to the Great Dividing Range on the north by the Great Dividing Range easterly to the range forming the western watershed of Dogwood Creek and its tributaries and on the remainder of the east by that watershed southerly to the confluence of the Dogwood Creek with the Condamine River the point of commencement.

No. 12.

ELECTORAL DISTRICT OF BURNETT.

28 Vic. No. 9 schedule
No. 12. 3 Pring 224. Commencing on the Great Dividing Range and bounded thence on the east by the range dividing the waters of the Burnett from those of the River Mary and by a spur range forming the western watershed of Degilbo Creek northerly to the confluence of said creek with the Burnett River thence by a line bearing north by compass to the northern watershed of the Kolan River on the north and west by the said watershed and the range forming the watershed between the Burnett and Dawson Rivers south-westerly to the Great Dividing

Dividing Range and by the Great Dividing Range southerly to the range dividing the 31 VICTORIA No. 3. waters of the River Brisbane from those of the Burnett River and on the south by the lastmentioned range easterly to the point of commencement.

No. 13.

ELECTORAL DISTRICT OF WIDE BAY.

Commencing on the seacoast and bounded thence on the south by the northern watershed of the Mooroochydore River to the range dividing the waters of the River Mary 28 Vic. No. 9 schedule No. 13. 3 Pring 224. from those flowing to the Brisbane River thence by that range westerly to the range dividing the River Mary from the Burnett River on the west by the said range northerly and by a spur range forming the western watershed of Degilbo Creek to the junction of that creek with the Burnett River thence by a line bearing north by compass to the northern watershed of the Kolan River on the north by the said watershed easterly to the sea and on the east by the seacoast southerly to the point of commencement and including the islands adjacent to the said seacoast exclusively however of the electoral district of Maryborough as herein described.

No. 14.

ELECTORAL DISTRICT OF PORT CURTIS.

Bounded on the south from the sea by the northern watershed of the Kolan River 28 Vic. No. 9 schedule No. 14. 3 Pring 224. and the northern watershed of the Burnett River westerly on the west by the range forming the eastern watershed of the Dawson River northerly to a point due east from Mount Ramsay thence by a line west to Mount Ramsay and its continuation to the Dawson River thence by the Dawson River downwards to its confluence with the Mackenzie River thence by the range separating the waters flowing into the Mackenzie River and Isaacs River from those flowing to the coast northerly thence on the north by a spur range easterly to Cape Palmerston and on the east by the seacoast southerly to the northern watershed of the Kolan River aforesaid and including all the islands adjacent thereto exclusively however of the electoral district of Rockhampton as herein described.

No. 15.

ELECTORAL DISTRICT OF LEICHHARDT.

Bounded on the south from the range dividing the waters of the River Burnett from 28 Vic. No. 9 schedule those of the Dawson River by the Great Dividing Range between the eastern waters and No. 15. 3 Pring 224. those flowing westerly and northerly to the range dividing the waters flowing into the Nogoa River from those falling into the Belyando River on the west by that range to a point bearing west from the confluence of Balmy Creek with the Nogoa River thence by a line east to that confluence then by the Nogoa River downwards to the confluence of Theresa Creek and by Theresa Creek upwards to the confluence of Sandy Creek and by Sandy Creek upwards to the confluence of Wolfgang Creek and by a line bearing north-west to a point bearing west from Fletcher's Awl thence by a line bearing east to Fletcher's Awl on the north by the northern watershed of the River Isaacs on the east by the watershed separating the Rivers Isaacs and Mackenzie from waters flowing to the coast and by a spur range to the confluence of the Dawson River and Fitzroy River and thence by the Dawson River upwards to a point bearing west from Mount Ramsay thence by a line bearing east to Mount Ramsay and by its continuation to the range forming the eastern watershed of the Dawson River and by that range southerly to the Great Dividing Range aforesaid.

No. 16.

ELECTORAL DISTRICT OF KENNEDY.

Commencing on the seacoast at Tam O'Shanter's Point and bounded thence on the 28 Vic. No. 9 schedule north by the northern watershed of the Mackay River and by the northern watershed of No. 16. 3 Pring 224. the Burdekin River westerly on the west by the western watershed of the Burdekin River in a southerly direction to a point bearing west from Fletcher's Awl on the south
by

- 31 VICTORIA No. 3. by a line bearing east to the range forming the watershed between the Fitzroy River and the Burdekin River on the south by that range and the range forming the northern watershed of the Fitzroy River and by a line easterly to the seacoast at Cape Palmerston and on the east by the seacoast northerly to Tam O'Shaunter's Point the commencing point aforesaid and including the islands adjacent to the said seacoast.

No. 17.

ELECTORAL DISTRICT OF MITCHELL.

- 28 Vic. No. 9 schedule
No. 17. 3 Pring 221. Bounded on the east by the Great Dividing Range forming the watershed between the Barcoo River and the Burdekin and Fitzroy Rivers on the south by the watershed separating the Barcoo River from the Warrego River westerly to the Mount Inniskillen Range and thence by the southern watershed of the Barcoo River downwards until intersected by a true south line from the confluence of the Thomson River with the Barcoo River on the west by a true north line to the junction of the Barcoo and Thomson Rivers thence by the western watershed of the Thomson River northward to the northern watershed of the Barcoo River and on the north by the said watershed to the eastern boundary.

No. 18.

ELECTORAL DISTRICT OF WARREGO.

- 28 Vic. No. 9 schedule
No. 18. 3 Pring 226. Commencing at a point on the watershed between the Warrego River and Mungallala Creek where it is intersected by the twenty-ninth degree of south latitude and bounded thence on the east by that watershed northerly to Mount Elliott thence by the watershed between the Warrego and Maranoa Rivers to the Great Dividing Range on the north by the watershed separating the Warrego Rivers from the Nogoia and Barcoo Rivers westerly to the Mount Inniskillen Range and thence by the southern watershed of the Barcoo River downwards until intersected by a south line from the confluence of the Thomson River with the Barcoo River on the west by a south line to the twenty-ninth parallel of south latitude on the south by the twenty-ninth parallel of south latitude true east to the point of commencement.

No. 19.

ELECTORAL DISTRICT OF CLERMONT.

- 28 Vic. No. 9 schedule
No. 19. 3 Pring 225. Commencing at the junction of Sandy and Wolfgang Creeks and bounded thence on the north by a line bearing north-west to a point bearing west from Fletcher's Aul and by a line bearing west to the western watershed of the Belyando River on the west and south by that watershed southerly and easterly and by a line bearing east to the junction of Balmy Creek with the Nogoia River on the east by the Nogoia River downwards to the junction of Theresa Creek and by Theresa Creek upwards to the junction of Sandy Creek and by that creek upwards to the point of commencement.

No. 20.

ELECTORAL DISTRICT OF DRAYTON AND TOOWOOMBA.

- 22 Vic. No. 9 schedule
No. 20. 3 Pring 225. Commencing at the south-west corner of the Drayton Agricultural Reserve and bounded thence on the south by a line bearing east to the south-west corner of Hodgson and Watts' 610 acres pre-emptive purchase number 5 Eton Vale thence by the west and north boundaries of same portion bearing north and east and by a line bearing east to pre-emptive portion of 160 acres Eton Vale thence by part of the western the northern and part of the eastern boundaries of that portion bearing north-east and south to a point bearing east from the north-east corner of the aforesaid 610 acres portion thence by a line bearing east about one mile ten chains on the east by a line bearing north about twenty-one miles on the north by the north boundary of the Toowoomba Agricultural Reserve bearing west six miles on the west by a line bearing south to a point bearing north seventy degrees east from the eastern extremity of the Gowrie Scrub thence by a line bearing south seventy degrees west to that scrub and by that scrub westerly to a point in the northerly prolongation of the east boundary line of H. and F. Isaacs' 160 acres pre-emptive purchase at the Well Station

Station again on the west by a line bearing south by that eastern boundary and in 31 VICTORIA No. 3. continuation by a line south to the north-east corner of J. D. McLean's 320 acres Westbrook by the east boundary of that portion and of a portion of 177 acres by the north boundaries of portions containing 691 acres and 360 acres bearing east by east boundary of the last-mentioned portion and of a portion of 320 acres bearing south by the north-east and part of the south boundary of another portion containing 320 acres by the east and part of the south boundary of a portion of 640 acres by the east boundary of another 640 acres portion and a line in continuation bearing south to the point of commencement.

No. 21.

ELECTORAL DISTRICT OF ROCKHAMPTON.

Commencing on the left bank of the Fitzroy River at the confluence of Etna Creek 28 Vic. No. 9 schedule with that river and bounded thence on the north-west by a line bearing north-east to the Mount Archer Range on the north-east by that range south-easterly to Mount Berserker thence by a line south-easterly to the north corner of portion number 103 containing 44 acres 2 rods in the parish of Archer thence by the north-west boundaries of portions numbers 103 102 and 83 in the same parish south-westerly to the Fitzroy River thence on the east by a line crossing the Fitzroy River to the north corner of portion number 135 containing 80 acres in the parish Gavial thence by the east boundaries of portions numbers 135 136 150 and 151 and a line bearing south on the south by a line bearing west passing through the southernmost corner of portion number 48 in the parish of Gavial to a point bearing south from the south-west corner of portion D section 37 in the parish of Wood on the west by a line bearing north to the said south-west corner and by Black Gin Creek downwards to Deep Creek and by Deep Creek downwards to the Fitzroy River and by the Fitzroy River downwards to Etna Creek the point of commencement.

No. 22.

ELECTORAL DISTRICT OF MARYBOROUGH.

Commencing on the north side of the main road from Cayndah to Maryborough at 28 Vic. No. 9 schedule the south-west corner of allotment number 1 of section number 174 containing 31 acres 2 No. 22. 3 Pring 225. rods 12 perches and bounded thence on part of the west by the western boundary of that allotment and by a line bearing north to Saltwater Creek on the north by Saltwater Creek downwards to the River Mary thence crossing the River Mary and by the right bank of the River Mary downwards to the easternmost corner of portion number 109 containing 87 acres in the parish of Maryborough on the south-east by the south-east boundary of that portion south-westerly to the southernmost corner of the said portion on the east by a line bearing south till it is intersected by the easterly prolongation of the north boundary of the Tiara town reserve on the south by a line bearing west crossing Tinana Creek and by the north boundary of the Tiara town reserve and its westerly continuation to the River Mary thence crossing that river by the left bank of that river downwards to the south-east corner of portion number 58 parish of St. Mary thence by the south boundary line of that portion and its continuation bearing west ninety-seven chains on the west by a line bearing north to the Cayndah and Maryborough road and on the remainder of the north by that road easterly to the point of commencement.

31 VICTORIA No. 37. **An Act to Consolidate and Amend the Laws relating to Parliamentary Elections.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to parliamentary elections Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

22 Vic. No. 20 s. 1.
1 Pring 523.

1. In the interpretation of this Act the following words in inverted commas shall have the meaning set against them respectively unless inconsistent with or repugnant to the context—

“Roll”—The revised electoral roll of electors entitled to vote at the election of any member of the Assembly.

“List”—Any unrevised electoral list of electors.

“Natural born subject”—Every person born in Her Majesty's dominions or either of whose parents was so born.

“Naturalized subject”—Every person who in England or Queensland has been is or shall be naturalized and every person made a denizen.

Qualification of Electors.

Qualification of electors.
29 Vic. No. 12 s. 2.
22 Vic. No. 20 s. 9.
1 Pring 525.

2. The qualifications for electors of the Legislative Assembly shall be as follows—Every man of the age of twenty-one years being a natural born or naturalized subject of Her Majesty or legally made a denizen of Queensland and having a freehold estate in possession situate in the district for which his vote is to be given of the clear value of one hundred pounds sterling money above all charges and encumbrances in any way affecting the same or to which he has been seized or entitled either at law or in equity for at least six calendar months next before the last registration of electors or being a householder within such district occupying any house warehouse counting-house office shop or other building of the clear annual value of ten pounds sterling money and having occupied the same for six calendar months next before such registration as aforesaid or having a leasehold estate in possession situate within such district of the value of ten pounds sterling money per annum held upon a lease which at the time of such registration has not less than three years to run or having a leasehold estate so situate and of such value as aforesaid of which he has been in possession for three years or upwards next before such registration or holding at the time of such registration a license from the Government to depasture lands within the district for which his vote is to be given or having a salary of one hundred pounds a year and having enjoyed the same for six calendar months next before such registration or being the occupant of any room or lodging and paying for his board and lodging forty pounds a year or for his lodging only at the rate of ten pounds a year and having occupied

occupied the same room or lodging for six calendar months next 31 VICTORIE No. 37.
before such registration as aforesaid shall be entitled to vote at the election of a member of the Legislative Assembly. Provided always that no man shall be entitled to vote who has been attainted or convicted of treason felony or other infamous offence in any part of Her Majesty's dominions unless he has received a free or conditional pardon for such offence or has undergone the sentence passed on him for such offence. And provided also that no man shall be entitled to vote unless at the time of such registration of electors he shall have paid up all rates and taxes which shall have become payable by him as owner or leaseholder in respect of such estate or as occupier in respect of such occupancy or as the holder of a license in respect of such license except such as shall have become payable during three calendar months next before such registration.

3. Where any premises are jointly owned occupied or held on lease within the meaning of the last preceding clause by more persons than one each of such joint owners occupiers or leaseholders shall be entitled to be registered as a voter and to vote in respect of the said premises in case the value of his individual interest therein separately considered would under the first four provisions of the said last preceding section entitle such owner occupier or leaseholder to be registered as a voter and to vote.

Where joint owners and occupiers shall be entitled to be registered as voters and to vote.

29 Vic. No. 12 s. 3.
22 Vic. No. 20 s. 10.
1 Pring 526.

4. So soon as there shall be in Queensland any university comprising not fewer than one hundred graduates who shall have taken therein any or either of the degrees of master of arts bachelor of arts doctor of laws bachelor of laws doctor of medicine or bachelor of medicine the said university shall return one member to serve in the Assembly in addition to the number of members therefor returned. And the first writ for the election of such member shall thereupon be issued by the Governor and all subsequent writs in the manner by law provided for other election writs. And the following persons shall be entitled to vote at the election of such member the said persons being of the full age of twenty-one years and natural born or naturalized subjects of Her Majesty and not being disqualified or incapacitated by this Act—

When there shall be a university in Queensland containing one hundred superior graduates such university to return one member.

Election writs.

27 Vic. No. 14 s. 3.
3 Pring 313.

Qualification of electors.

22 Vic. No. 20 s. 15.
1 Pring 526.

The fellows of the senate for the time being

The professors and all other public teachers and examiners in the university schools and the principals of incorporated colleges within the university for the time being

Masters of arts doctors of laws or medicine and all other members of the university who at the date of the issue of the writ of election shall be entitled to vote at elections for fellows of the senate thereof

Bachelors of arts laws or medicine.

Disqualifications.

5. Every person nevertheless shall be disqualified who at the time either of making out the lists hereinafter mentioned or of the election for his district shall be of unsound mind or in the receipt of aid from any charitable institution or who has been attainted or convicted of treason felony or other infamous offence in any part of Her Majesty's dominions unless he have received a free or conditional pardon for such offence or have undergone the sentence passed on him.

Disqualifications.

22 Vic. No. 20 s. 11.
1 Pring 526.

6. Every

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Persons in the military service or in the police clerks of petty sessions and paid police magistrates.
22 Vic. No. 20 s. 12.
1 Pring 526.

6. Every person shall be incapable of voting who at the time either of making out such list or of such election shall be in the naval or military service on full pay not being in any militia or volunteer corps only And no inspector-general or metropolitan superintendent of police or paid police magistrate or superintendent of police nor any clerk of petty sessions nor any clerk chief or other constable or person belonging to the constabulary force shall during the time he shall continue in any such office be capable of giving his vote for the election of a member to serve in the Assembly nor shall by word message writing or in any other manner endeavor to persuade any elector to give or dissuade any elector from giving his vote for any candidate and every person incapacitated as last aforesaid who shall offend herein shall forfeit the sum of one hundred pounds to be recovered by any person who shall sue for the same by action of debt to be commenced within six months after the commission of the offence.

Claims and Objections to Votes.

Persons claiming to vote.
29 Vic. No. 12 s. 4.

7. On or before the first day of February in any year every person claiming to have his name inserted in any electoral roll shall give or transmit by post notice in writing thereof in the form of the schedule hereto marked A number one to the clerk of the nearest court of petty sessions who shall immediately subsequent to the first day of February cause fairly written or printed copies as in the said schedule B number two to be made of the list or lists of claims received by him and shall cause such fairly written or printed copies to be exposed to public view at the police office and at such other places of public resort as the bench of magistrates may direct not later than the fourteenth day of the same month the lists to be exhibited for fourteen days from that date Provided that no clerk of petty sessions shall receive any notice of claim unless in the form prescribed in schedule A number one of this Act.

SCHEDULE A.

NUMBER ONE.

Notice of Claim to be given to Clerk of Petty Sessions.

To the Clerk of Petty Sessions in the Electoral District of

I hereby give you notice that I claim to have my name inserted in the electoral roll for the electoral district of _____ my name residence and qualification being as hereunder stated—

Christian and Surname.	Residence.	Qualification.	Where situate or how arising.

Dated this _____ day of _____ Signed _____ 18 ____.

NUMBER TWO.

List of Persons Claiming to be Published by Clerks of Petty Sessions.

The following persons have claimed to have their names inserted in the electoral roll for the electoral district of

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

8. Every

Schedule A.
29 Vic. No. 12.

Schedule F.
22 Vic. No. 20.
1 Pring 558.

8. Every person named on any electoral roll objecting to any other person as not being entitled to have his name retained or inserted thereon shall on or before the first day of March in any year give or transmit by post to the clerk of petty sessions as aforesaid and also to the person objected to at his last known place of abode a notice objecting to the retention or insertion of such name on the roll in the form of the schedule hereto marked B number one and the clerk of petty sessions as aforesaid shall immediately subsequent to the first day of March cause fairly written or printed copies to be made of the list or lists of objections received by him and shall cause the said fairly written or printed lists to be publicly exposed on the fourteenth day of March in like manner and for the same period as provided in the previous clause with reference to the lists of claims and in the form of the said schedule B number two and every person duly objected to shall except in the case hereinafter mentioned be required to appear at the revision court by himself or by some one on his behalf and when required by the court shall establish his qualification by satisfactory proof or in default thereof shall be struck off the roll.

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 —
 Persons objected to as not being entitled to remain on electoral roll.
 20 Vic. No. 12 s. 5.

SCHEDULE B.
 NUMBER ONE.

Notice of Objection to be Given to Clerk of Petty Sessions.

To the Clerk of Petty Sessions in the Electoral District of

I hereby give you notice that I object to the retention or insertion of the under-mentioned name [or names] on the electoral roll for the electoral district of and I herewith enclose the sum of one pound [for each name] in accordance with the provisions of the *Elections Act of 1867*.

Schedule B.
 29 Vic. No. 12.

No. on Roll.	Name of Voter.	Residence.	Qualification.	Where situate or how arising.

Signature of Objector _____

Dated this _____ day of _____ 18 _____

* * A copy of this form of objection must also be forwarded to each person objected to.

NUMBER TWO.

List of Persons objected to to be published by the Clerks of Petty Sessions.

The following persons have been objected to as not being entitled to have their names retained on the electoral list for the electoral district of

Schedule G.
 22 Vic. No. 20.
 1 Pring 558.

Christian and Surname.	Residence.	Qualification claimed.	Where situate or arising.

9. Any person upon whom notice of objection has been served may if he reside at a distance of more than twenty miles from any revision court before the revision day send in to the clerk of petty sessions

Claims may be supported in writing.
 29 Vic. No. 12 s. 6.

31 VICTORIÆ No. 37. sessions of the district for which his name is on such roll a declaration made and subscribed in the form contained in schedule C before a justice of the peace setting forth his qualification as an elector and such declaration shall be received as the evidence of the person objected to as though he was present and duly sworn by the revising officer or bench of magistrates at the revision of such electoral roll.

SCHEDULE C.

Declaration in Establishment of Qualification by Person exempted from Attendance under section 11.

Schedule C.
29 Vic. No. 12.

I do solemnly declare that I am possessed of a [*freehold leasehold &c.*] qualification in the Electoral District of _____ and that I reside a distance of more than twenty miles from any revision court and that the following is a correct description of the said qualification viz. :—

[*Here state details of nature of qualification.*]

To the best of my knowledge information and belief the above declaration made and subscribed before me at _____ this _____ day of _____ 18 _____ is correct.

A. B.

Justice of the Peace.

Objectors to deposit
one pound for every
name objected to.
29 Vic. No. 12 s. 13.

10. Every objector shall together with each notice of objection give or transmit by post to the clerk of petty sessions a deposit of one pound sterling for each name objected to and if the revision court shall order any objector to pay costs as hereinafter provided all moneys so deposited by him shall if necessary be applied towards payment of such costs and any surplus after payment of the costs awarded shall be returned to the objector or if the revision court do not award costs the whole of the moneys deposited shall be returned.

To be returned in
certain cases.

Courts of Revision.

Revision Courts.
29 Vic. No. 12 s. 7.

11. Courts of revision for revising the electoral rolls shall be held once in every year (apart from the courts of examination hereinafter provided for) by justices in petty sessions at their usual places of meeting or at such other places as may be found convenient in and for every electoral district some time between the twenty-eighth day of March and the twenty-eighth day of April inclusive and such justices shall cause a notice under the hand of the clerk of petty sessions to be inserted in some one or more of the nearest local newspapers or otherwise made public at least ten days previous to the holding of the court of revision stating the place and time of holding such court and an open court shall be held accordingly for the revision of the electoral roll and the justices shall from day to day appoint one of their own number to preside at such court unless the judge of any district court shall happen to be at any town or place within his district upon the day or days upon which such revision court is appointed to be holden when the said judge shall *virtute officii* preside at such revision court Provided that in the event of a deficiency or expected deficiency of justices in any district the Governor in Council may appoint any other person or persons to perform the duties required of justices in petty sessions by this clause Provided further that no candidate for election or member of the Legislative Council or Legislative Assembly shall take

When to be held.

District Court Judge
to preside if present.

No member of Legis-
lature to take part.

take

take any part in the revision of any roll or any part thereof under a 31 VICTORIA No. 37.
penalty of twenty pounds to be recovered in a summary manner
before any two justices of the peace.

12. The clerk of petty sessions shall at the opening of such court of revision produce the electoral roll of the district and the list of claims and objections and a copy of the papers so containing the names of persons claiming and of persons objected to. And the presiding judge or justice shall insert in the roll the name of every person claiming as aforesaid to be inserted who shall be proved to the satisfaction of the court to be qualified and shall retain on the roll the names of all persons to whom no objection shall have been duly made and the name of every person objected to unless the party objecting shall appear by himself or by some one on his behalf in support of such objection and shall establish the same by satisfactory proof. And the presiding judge or justice shall expunge from the roll the name of every person whose qualification shall be disproved or who shall appear to be disqualified to the satisfaction of the court or who shall be proved to be dead and shall correct any mistake or supply any omission proved to have been made in any such roll in respect of the name or abode of any person included therein or the nature or local description of his qualification. Provided that no person's name shall be inserted by such judge or justice in any roll or expunged therefrom except in the case of death unless notice shall have been given as aforesaid. Provided that in the case of an alteration of the boundaries of any electoral district the names of all persons whose qualifications thereby cease to be within the district so altered shall be removed by the revision court from the roll of such district although no objection shall have been made to such names or any of them. And the presiding judge or justice shall in open court write his initials against every name struck out or newly inserted and against any part of any roll in which any mistake shall have been corrected and shall sign his name to every page of every roll so revised and no alteration in any roll shall be valid unless so initialed.

Proceedings at revision courts.
29 Vic. No. 12 s. 8.

13. Every such court of revision shall have power to adjourn from time to time for seven days from the commencement of such court provided no such adjourned court shall be held beyond the twenty-eighth day of April in any year and every such court shall have the same powers as the Supreme Court to summon and examine witnesses and to compel the production of any books or documents relating to any matter necessary for revising any roll in the same manner and by like process as any justice by any law now or hereafter to be in force is or shall be authorised or empowered to do in cases of summary convictions and orders and every person to whom any such summons is issued shall be entitled and subject to the same rights and liabilities in all respects as if such summons had been issued on behalf of the prosecutor complainant or defendant.

Power of adjournment and summoning witnesses.
29 Vic. No. 12 s. 9.

14. If during the holding of any revision court it shall appear to the justices that any claim or claims have been omitted from the electoral roll or rolls under revision by the negligence of any officer connected with such revision court the said justices shall have power to add such claim or claims to the roll or rolls.

Justices may include names accidentally omitted when claiming.
29 Vic. No. 12 s. 19.

Costs.

31 VICTORIA No. 37.

Costs.

Costs in certain cases.

Vic. No. 12 s. 12.

15. If in any case it shall appear to any revision court that any person shall have made or attempted to sustain any groundless or frivolous and vexatious claim or objection the court may order the payment by such person of the costs or of any part of the costs of any and every person in resisting such claim or objection and in every such case the court shall make an order in writing specifying the sum to be so paid and by and to whom and when and where the same shall be paid and shall date and sign the said order and deliver it to the person to whom such sum shall therein be ordered to be paid.

Recovery of costs.

29 Vic. No. 12 s. 14.

16. If the costs to be paid by any objector shall exceed the amount deposited by him and if any further sum of money so ordered to be paid by any person shall not be paid according to the terms of the order any justice may and shall upon proof before him that a true copy of the order hath been served upon or left at the usual place of abode of the person therein ordered to pay such sum and that the said sum hath been demanded of such person and that he has refused or neglected to pay the same by warrant under his hand and seal order such sum together with the costs of and attending such warrant to be levied by distress and sale of all such goods and chattels of the person so making default as may be found within the jurisdiction of such justice and the surplus (if any) after such sum of money and costs and the charges of such distress and sale are deducted shall be returned upon demand to the owner of such goods and chattels. Provided that no *certiorari* or other writ or process for the removal of any such order or warrant into the Supreme Court shall be allowed.

The Roll.

Revised roll to be
arranged and printed.
29 Vic. No. 12 s. 10.

17. Immediately after the roll has been revised at each revision court the clerk of petty sessions shall forward the same to the returning officer of the electoral district who shall cause the said roll to be arranged in alphabetical order and the names to be numbered in regular arithmetical progression and shall cause two fair copies of the said roll to be prepared one of which he shall forward to the Colonial Secretary and from the other cause printed copies to be prepared duly certified by him at the Government or other convenient printing office and the electoral roll may and shall be signed by the returning officer and shall be in the following form—

ELECTORAL ROLL.

Schedule D.
22 Vic. No. 20.
1 Pring 558.

List of persons qualified to vote for the election of members of the Legislative Assembly in the year 18 for the electoral district of for which I am returning officer.

A. B.
Returning Officer for

Dated this day of			
Christian and surname.	Residence.	Qualification.	Where situate or how arising.

18. The

18. The said roll shall be held to be the roll of electors entitled to vote in each respective electoral district at all elections between the fifteenth day of June inclusive in the year in which such roll shall have been made and the fifteenth day of June inclusive in the succeeding year and shall during that period be conclusive evidence of the title to vote of each elector therein named unless disqualified or incapacitated for any of the causes herein mentioned. Provided that if in any year the roll for any electoral district shall not be regularly made out or shall not be perfected the roll for the preceding year shall wholly or in part as the case may require be used as the roll for another year and the returning officer in every electoral district shall deliver a copy of the roll for such district to all persons applying for the same on payment of a reasonable price for each copy.

31 VICTORIA No. 37.

Roll conclusive evidence of title to vote.
29 Vic. No. 12 s. 11.

What roll to be used if new one not perfected.

19. It shall not be sufficient for a person to be described on an electoral roll as possessing a qualification within the district but if claiming to possess a freehold household or leasehold qualification a description sufficient to identify such freehold household or leasehold and if claiming to be qualified on account of a license a description sufficient to identify the run for which he holds such license and if claiming to be qualified on account of a salary a description sufficient to identify the place whereat he serves for such salary and the service for which such salary is paid and if claiming to be qualified on account of board and lodging or lodging a description sufficient to identify the lodging which he occupies must be appended to his name on the roll.

Qualification to be particularly described.
29 Vic. No. 12 s. 18.

20. No person shall be entitled to have his name entered more than once upon any one electoral roll notwithstanding that he may be possessed of more than one qualification within the same district and whenever it shall appear to the justices at such examination court as hereinafter mentioned that any person is named more than once in the same electoral roll they shall cause the clerk of petty sessions to transmit a notice to such person requiring him to state under which qualification he desires to remain on the roll and if in fourteen days after the serving of such notice upon the person he should fail to state his preference then the justices shall retain that entry of his name which comes last on the roll and shall cause the clerk of petty sessions to give a separate notice of objection to the said person on account of each entry of his name other than that hereinbefore directed to be retained.

No name more than once on roll.
29 Vic. No. 12 s. 16.

Courts of Examination of Rolls.

21. At some convenient time during the months of November or December in each year an open court of examination of which thirty days' notice shall be given in the public newspapers or in some other public manner where no newspapers are published shall be held by the justices in petty sessions at their usual places of meeting or at such other places as may be found convenient and at such court the said justices shall examine the electoral rolls in force within the respective electoral districts in which such courts may be held and whenever they shall be in doubt whether any qualification specified on the electoral roll as being situate or arising within such districts as aforesaid is really possessed by the person to whose name it is appended or where such qualification is situated

Courts for examining rolls.
29 Vic. No. 12 s. 15.

31 VICTORIA No. 37. situated or what is the exact nature of such qualification they shall cause the clerk of petty sessions to require from the person represented to possess such qualification or from his known and accredited agent satisfactory proof thereof and shall direct the said clerk what proof to require and in default of such proof being received before the day hereinbefore fixed for making objections shall cause the said clerk to object to such person in due form. Provided that no objection made by a clerk of petty sessions in pursuance of an order from such justices shall be deemed to be groundless frivolous or vexatious and that the provisions of section twelve above shall not apply to any clerk of petty sessions acting in pursuance of such order.

Elector to have power to alter mis-spelt name &c.

29 Vic. No. 12 s. 17.

22. If any elector whose name has been duly inserted on an electoral roll shall find that his christian name or surname or both has been mis-spelt upon such roll or that any mistake has been made in the transcription or printing of his name or address by which he is subjected to the probable loss of his vote at an election it shall be competent for such person to appear before the justices at the aforesaid court of examination and upon his offering satisfactory evidence as to his identity and qualification and that he was the person whom the mis-spelt name was intended to represent the said justices may cause the name to be properly inserted and it shall not be necessary for such person to present a fresh claim at the time appointed in order to secure to himself the privilege of voting.

Returning Officers.

Returning officers for electoral districts.
22 Vic. No. 20 s. 32.
1 Pring 530.

23. The Governor in Council may appoint by writing under his hand a fit person to be returning officer of each electoral district such person being at the time of his appointment registered as an elector of the electoral district for which he is to act and every such appointment shall be notified in the *Gazette*. And in case of sickness or other accident disabling any returning officer from acting at any election the Governor in Council may appoint some person so qualified to be and to act as returning officer in his stead.

Returning officers and other officers to make declaration.
22 Vic. No. 20 s. 33.
1 Pring 530.

24. Every person appointed returning officer presiding officer or poll clerk under this Act shall before he enters on the duties of such office make and subscribe a solemn declaration before some justice in the form of the schedule hereto marked D. And such justice shall transmit the declaration so made by the first convenient opportunity to the Colonial Secretary.

SCHEDULE D.

Declaration to be made by the Returning Officer [or other officer under this Act].

Schedule C.
22 Vic. No. 20.
1 Pring 557.

I do hereby declare that I accept the office of returning officer [or other office as the case may be] for the electoral district of _____ and I do hereby promise and declare that I will faithfully perform the duties of my office to the best of my understanding and ability and that I will not attempt to ascertain for whom any elector shall vote and that I will not by any word or action directly or indirectly aid in the discovery of the same. And that I will keep secret all knowledge of the mode in which any elector has voted which I may obtain in the exercise of my office unless in answer to any question which I am legally bound to answer.

Declared before me this

day of

18

Justice of the Peace.

25. The

25. The Governor in Council may by notice in the *Gazette* from 31 VICTORIA No. 37. time to time appoint places for taking the poll.

26. All writs for the election of members to serve in the Assembly shall be directed to the returning officers of the respective electoral districts. And in every such writ shall be named the day and place of nomination for the election the day for taking the poll at the several polling places in the event of the election being contested and the day on which the writ shall be returnable to the Governor or Speaker as the case may be.

Polling places.
22 Vic. No. 20 s. 34.
1 Pring 530.
Writs directed to
returning officers.
22 Vic. No. 20 s. 35.
1 Pring 530.

27. Each returning officer shall endorse upon the writ so directed to him the day on which he receives it and shall forthwith give public notice of the day and place of nomination and of the day of polling mentioned in such writ and of the several polling places and shall also as soon as possible give public notice of any polling place appointed after the issue of such writ.

Nomination and poll-
ing days to be
publicly notified.
22 Vic. No. 20 s. 36.
1 Pring 530.

The Nomination.

28. On the day of nomination named in the writ the returning officer shall preside at a meeting to be holden at noon at the place named for that purpose in the writ and shall declare the purpose for which such meeting is held. And if no more candidates be then proposed than the member or number of members to be returned the returning officer shall declare the candidate or candidates proposed to be duly elected and make his return accordingly. And if more than such number be proposed the returning officer shall call for a show of hands separately in favor of each candidate and shall declare the result of such show of hands and shall make his return accordingly unless a poll be then and there demanded by some candidate or by not fewer than six electors of the electoral district. And if such demand be made for a poll the polling shall take place by ballot at the polling places for such district on the day appointed in the writ for that purpose.

Mode of proceeding
on the day of nomi-
nation
22 Vic. No. 20 s. 37.
1 Pring 530.

The Poll.

29. In the event of there so being more candidates nominated than the number to be returned at any election and a poll being demanded the returning officer shall cause booths to be erected or rooms to be hired and used as such booths in one place or in several places at each polling place as occasion may require and the same shall be so divided and allotted into compartments as to the returning officer shall seem most convenient and he shall appoint clerks to take the poll and shall before the day fixed for taking the poll cause to be furnished for the use of each booth or polling place a copy of the roll of the electoral district certified under his hand to be true and all expenses which the returning officer shall necessarily incur in and about such election under the provisions of this enactment or otherwise howsoever shall be defrayed out of the consolidated revenue fund under warrant in the usual manner.

Booths to be erected.
22 Vic. No. 20 s. 38.
1 Pring 531.

30. The returning officer of each electoral district shall preside at one polling place within or belonging to his district and shall appoint such other presiding officers and such polling clerks as may be required for taking the poll at the other polling places. And in case of any returning officer or any other presiding officer being prevented from attendance

Returning officer to
provide deputy or
substitute.
22 Vic. No. 20 s. 39.
1 Pring 531.
Absence of returning
officer or deputy or

31 VICTORIA No. 37. attendance by illness or other sufficient cause he may appoint by writing under his hand a substitute to act for him who shall have full power and authority to do all things required by this Act to be done by his principal at his polling place only and shall be implied by the term "presiding officer" whenever herein used And if by reason of the absence of the presiding officer the poll shall not be taken at any polling place the election shall not be therefore void but it shall be lawful for the returning officer to appoint another day not later than thirty days from the day named in the writ for taking the poll at such polling place of which due notice shall be publicly given and the poll shall be taken accordingly and be deemed to have been taken on the day first appointed.

Ballot papers to be printed and furnished.
22 Vic. No. 20 s. 40.
1 Pring 531.

31. Before and in time for every such election the returning officer shall cause to be printed or written ballot papers according to the form of the schedule hereto marked E and shall supply to the presiding officer of each polling place so many of such ballot papers as shall be fully equal to the number of electors likely to vote at such polling place and shall keep for himself a like sufficient number for the polling place at which he is to preside.

SCHEDULE E.

Balloting Paper.

Schedule H.
22 Vic. No. 20.
1 Pring 559.

Polling day the	Electoral district of	day of	18	.
Names of candidates.				

Returning officer to provide a ballot room.
22 Vic. No. 20 s. 41.
1 Pring 531.

32. At every booth or polling place there shall be one or more compartments or ballot rooms provided with all necessary materials for the purpose of enabling the elector to mark the ballot paper as hereinafter provided and in the said booth or polling place no person shall be entitled to be present other than the presiding officer the poll clerk the candidates and the scrutineers of the several candidates to be appointed as hereinafter provided and the electors who shall for that time be voting and every person who shall intrude into such booth or polling place other than such presiding officer poll clerk candidates scrutineers and electors actually voting shall be deemed guilty of a misdemeanor Provided always that it shall be lawful for the presiding officer or poll clerk to summon to his assistance in such booth or polling place any members of the police force for the purpose of preserving the public peace or preventing any breach thereof and for removing out of such booth or polling place every person who may in his opinion be obstructing the polling or wilfully violating any of the provisions of this Act.

Presiding officer to provide ballot box and papers.
22 Vic. No. 20 s. 42.
1 Pring 531.

33. The presiding officer shall provide a locked box of which he shall keep the key with a cleft or opening in such box capable of receiving the ballot paper folded as hereinafter mentioned which box shall be open to inspection by the poll clerks candidates and scrutineers previously to its being locked for receiving the ballot papers and such box shall stand upon the table at which the presiding officer or poll clerk and scrutineers preside and are placed And each elector having previously satisfied the presiding officer that he is entitled to vote at such

Mode of voting.

such election shall then receive from the presiding officer or poll clerk one of the ballot papers initialed by the presiding officer at the time of the delivery of which ballot paper to any elector the presiding officer or poll clerk shall upon a certified copy of the electoral roll make a mark against the name of such elector which mark shall be *prima facie* evidence of the identity of such elector with the person whose name shall be so marked on the electoral roll and of the fact of his having voted at such election.

31 VICTORIA No. 37.

Voter to be marked
off on roll.

34. Every such elector shall in one of the compartments or ballot rooms provided for the purpose strike out from his ballot paper the names of such candidates as he does not intend to vote for and shall forthwith fold up the same in such manner as will conceal the names of the candidates and shall deposit it in the ballot box in the presence of the presiding officer. Provided that while an elector is in the compartment or ballot room preparing his ballot paper no other person shall be allowed in such compartment or ballot room. Provided nevertheless that in case any elector shall be unable to read or shall be blind he shall signify the same to the presiding officer who shall thereupon in the booth or polling place strike out the names of such candidates as the elector shall express his wish to have struck out. And no elector shall take out of such booth or polling place any such ballot paper either before or after the same has been so marked. And any elector wilfully infringing any of the provisions of this section or obstructing the polling by any unnecessary delay in performing any act within the ballot room shall be deemed guilty of a misdemeanor.

Mode of voting.

22 Vic. No. 20 s. 43.

1 Pring 532.

35. At every poll the voting shall commence at nine o'clock in the forenoon and shall finally close at four o'clock in the afternoon of the same day unless adjourned as hereinafter provided by reason of riot or other interruption except for such districts as may from time to time be notified by proclamation under the hand and seal of the Governor and published in the *Gazette* in which electoral districts the voting shall commence at eight o'clock in the forenoon and every such elector may vote for any number of candidates not exceeding the number of members then to be chosen and any ballot paper containing a greater number of names of candidates or without the initials of the presiding officer shall be rejected at the close of the poll.

Proceedings at the
poll.

22 Vic. No. 20 s. 44.

1 Pring 532.

36. Each candidate may appoint one person to be scrutineer at each booth or polling place at the election and every person so appointed scrutineer shall upon his appointment make and subscribe a solemn declaration in the presence of the presiding officer in the form of the schedule hereto marked F.

Appointment of
scrutineers.

22 Vic. No. 20 s. 45.

1 Pring 532.

SCHEDULE F.

Declaration to be made by Scrutineers.

I, a scrutineer appointed by a candidate for election in and Schedule I. for the electoral district of do hereby solemnly declare that I will faithfully assist at such election and that I will not attempt to ascertain for whom any elector shall vote and that I will not by any word or action directly or indirectly aid in the discovery of the same. And that I will keep secret all knowledge of the mode in which any elector has voted which I may obtain in the exercise of my office unless in answer to any question which I am legally bound to answer.

22 Vic. No. 10.

1 Pring 559.

Declared before me this

day of

18

Returning officer or presiding officer.

31 VICTORIA No. 37.

Questions to voters.
22 Vic. No. 20 s. 46.
1 Pring 532.

37. No inquiry shall be permitted at the time of polling as to the right of any person to vote except only as follows (that is to say) the presiding officer shall if he think fit or if required by any candidate or scrutineer put to any elector before he shall have voted and not afterwards the following questions or either of them and no other that is to say—

- 1st. Are you the same person whose name appears as (A. B. number—) in the roll in force for this electoral district?
- 2nd. Have you already voted either here or elsewhere at the present election for this electoral district?

and if there be any gold field within the boundaries of the district—

- 3rd. Have you already voted for any gold fields electoral district?

Provided that if the election be for any gold fields electoral district the following questions shall be substituted for the first of the said questions—

1. Are you the person named in the miner's right (or license or lease) now produced by you?
2. Have you already voted either here or elsewhere at this election for this or any other electoral district within the boundaries whereof there is any gold field?

Questions to be answered before voting.
22 Vic. No. 20 s. 47.
1 Pring 533.
Declaration against bribery.
22 Vic. No. 20 s. 48.
1 Pring 533.

38. No person so required to answer the said questions or either of them shall be permitted to vote until he shall have satisfactorily answered the same.

39. The presiding officer shall if he think fit or if called upon so to do by any candidate or scrutineer require any person tendering a ballot paper to make a solemn declaration against bribery in the form of the schedule hereto marked G.

SCHEDULE G.

Declaration against Bribery.

Schedule K.
22 Vic. No. 20.
1 Pring 559.

I [A. B.] do solemnly declare that I have not received or had by myself or any person whatsoever in trust for me or for my use and benefit or for the use and benefit of any member of my family or kindred or any friend or dependent directly or indirectly any sum or sums of money office place of emolument gift or reward or any promise or security for any money office employment or gift by way of consideration either expressed implied or understood for giving my vote at this election.

No other declaration necessary.
22 Vic. No. 20 s. 51.
1 Pring 533.

40. No elector shall at any election be required to take any oath affirmation or declaration except as aforesaid And no person claiming to vote at any election shall be excluded from voting thereat except by reason of its appearing to the presiding officer upon putting such questions or any of them that he is not the person whose name appears on the roll or that he has previously voted at the same election within the same district or otherwise contrary to this Act or except by reason of such person refusing to answer any of the said questions or to make the said declaration.

Proceedings in case of riot or violence.
22 Vic. No. 20 s. 54.
1 Pring 531.

41. Where the proceedings at any election shall be interrupted or obstructed by any riot or open violence the presiding officer shall not for such cause finally close the poll but shall adjourn the poll at the particular polling place at which such interruption or obstruction shall have happened to the following day and if necessary shall further adjourn such poll from day to day until such interruption or obstruction shall have ceased when the presiding officer shall again proceed with the business of taking the poll at the place at which the same may have been interrupted or obstructed And any day whereto the poll shall

shall have been so finally adjourned shall as to such place be reckoned the day of polling at such election within the meaning of this Act. Provided that no adjournment shall be made to any day beyond that named as the return day in the writ and if the election shall not have been completed by that day the returning officer shall specially return that fact. And where any such poll shall have been adjourned by any presiding officer other than the returning officer he shall forthwith give notice of such adjournment to the returning officer who shall not finally declare the state of the poll or the name or names of the member or members chosen until the poll shall have been finally closed and the balloting papers or statement of numbers hereinbefore mentioned delivered or transmitted to such returning officer. And every presiding officer shall have power and authority to maintain and enforce order and keep the peace at the election held by him and shall cause to be arrested and taken before a justice of the peace any person reasonably suspected of personating or attempting to personate any other person for the purpose of voting at such election or who shall vote or attempt to vote a second time or who shall cause a disturbance. And every person so offending shall be deemed guilty of a misdemeanor.

31 VICTORIA. No. 37.

Declaration of Result.

42. Each presiding officer other than the returning officer shall immediately on the close of the poll in the presence of the poll clerk and also of such of the scrutineers as may desire to attend examine and count the number of votes for each candidate and shall then seal up all the ballot papers which have been taken at the polling place whereat he presided together with all books kept by him during the polling and shall with the least possible delay deliver them or cause them to be delivered together with the roll supplied to him and signed by him and the poll clerk or clerks to the returning officer and shall at the same time transmit to such returning officer a written statement signed by such presiding officer and countersigned by his poll clerk and any scrutineers who may be present containing the numbers in words as well as figures of the votes for each candidate so counted as aforesaid and shall by the next possible opportunity thereafter also transmit a duplicate of such statement signed and countersigned as aforesaid.

Presiding officer to seal and forward ballot papers to returning officer.
22 Vic. No. 20 s. 52.
1 Pring 533.

43. Every returning officer shall at the close of the poll in the presence of his poll clerk and of such scrutineers as may attend examine and count the number of votes for each candidate at his own polling place and after making and signing a like statement of such numbers and procuring like counter signatures thereto as aforesaid shall seal up all the ballot papers and books taken and kept at his own polling place. And as soon as possible after he shall have received the ballot papers taken by the other presiding officers and the several statements of the number of votes transmitted by them as aforesaid he shall from his own and such other statements and without re-opening any sealed ballot papers ascertain the gross number of votes for each candidate. And the returning officer shall then at the place of nomination openly declare the general state of the poll as the same shall have been so made up and shall at the same time and place declare

Declaration of poll.
22 Vic. No. 20 s. 53.
1 Pring 533.

31 VICTORIA No. 37. declare the names of the persons elected And in the event of the number of votes being found to have been equal for any two or more candidates he shall by a casting vote decide which shall be elected Provided that no returning officer shall vote at any election for the electoral district of which he is the returning officer except in the case of an equality of votes as aforesaid.

The Return.

Name of person
elected to be indorsed
on writ.
22 Vic. No. 20 s. 55.
1 Pring 534.

44. The name of every person elected shall be indorsed on the writ by the returning officer and the writ shall be by him returned to the Governor or Speaker as the case may be within the time specified therein.

Balloting papers to be
transmitted to the
clerk of Assembly.
22 Vic. No. 20 s. 56.
1 Pring 534.

45. All the ballot papers so sealed up as aforesaid shall by the returning officer be transmitted to the clerk of the Assembly who shall safely keep the same for five years after the receipt thereof and the sealed packets containing the same shall on the outside thereof be described to be the balloting papers of the electoral district to which they relate and be signed by such returning officer And in case any question shall at any time arise touching the number of votes alleged to have been given at any election the ballot papers shall be received in evidence as proof of such number of votes in any court of justice or by the Committee of Elections and Qualifications of the said Assembly upon production thereof together with a certificate thereon under the hand of the clerk of the Assembly that the same was transmitted to him in due course by the returning officer of the electoral district to which the same relates.

Election not to be
questioned.
22 Vic. No. 20 s. 57.
1 Pring 534.

46. No election under this Act shall be liable to be questioned by reason of any defect in the title or any want of title of any person by or before whom such election shall have been holden if such person shall have really acted at such election nor by reason of any formal error or defect in any declaration or other instrument or in any publication under this Act or intended so to be nor by reason of any such publication being out of time.

Remedy for informal-
ities in election pro-
ceedings.
22 Vic. No. 20 s. 58.
1 Pring 535.

47. No election for any electoral district shall be void in consequence solely of any delay in the holding of the election at the time appointed or in the taking of the poll or in the return of the writ or in consequence of any impediment of a merely formal nature And the Governor with the advice aforesaid may adopt such measures as may be necessary for removing any obstacle of a merely formal nature by which the due course of any election might be impeded Provided that the validity of such election and the measures so taken shall be forthwith declared by the Governor by a proclamation for that purpose published in the *Gazette*.

Bribery.

What shall be deemed
acts of bribery.
22 Vic. No. 20 s. 59.
1 Pring 535.

48. All and each of the following acts shall be deemed and taken to be acts of bribery and corruption on the part of any candidate whether committed by such candidate or by any agent authorised to act for him (that is to say)—the giving of money or any other article whatsoever to any elector with a view to influence his vote or the holding out to any elector any promise or expectation of profit advancement or enrichment to himself or to any of his family or kindred

kindred friends or dependents in any shape in order to influence his vote or making use of any threat to any elector or otherwise intimidating him in any manner with a view to influence his vote the treating of any elector or the supplying him with meat drink lodging or horse or carriage hire or conveyance by steam or otherwise whilst at such election or whilst engaged in coming to or going from such election the payment to any elector of any sum of money for acting or joining in any procession during such election before or after the same the keeping open or allowing to be kept open any public house shop booth or tent or place of entertainment whether liquor or refreshment of any kind be distributed at such place of entertainment or not the giving of any dinner supper breakfast or other entertainment at any place whatsoever by a candidate to any number of electors with a view of influencing their votes And no action or suit shall be maintainable by any publican or any owner or keeper of any shop booth tent or other place of entertainment against any candidate or any agent of any such candidate for any liquor food or refreshment of any kind whether for man or beast supplied upon the credit of any such candidate or agent as aforesaid during the progress of any such election under this Act.

49. The commission of any one of the above mentioned acts shall on proof thereof by the decision of the said Committee of Elections and Qualifications be held to render void the election of the person committing such act and to disqualify him from sitting and voting in the Assembly during the whole period that may intervene between the commission of the same and the time of the next general election.

50. The acts of every authorised agent of a candidate shall for the purposes of the two sections last preceding be held to be the acts of such candidate Provided that it be proved to the satisfaction of the said committee that such acts were committed with his knowledge power or consent.

Penalties.

51. Every returning officer who after having accepted office as such shall wilfully neglect or refuse to perform any of the duties which by the provisions of this Act he is required to perform shall for every such offence forfeit and pay any sum not exceeding two hundred pounds And in like manner every justice presiding or other officer or person who shall wilfully neglect or refuse to perform any of the duties which by the provisions of this Act he is required to perform shall for every such offence forfeit and pay any sum not exceeding fifty pounds the said penalties to be recovered with full costs of suit by any person who shall sue for the same within six months after the commission of the offence Provided that the Governor in Council may mitigate or wholly remit any such penalty or forfeiture.

52. Every person who shall vote a second time or attempt to vote a second time at the same election for the same electoral district or who shall personate or attempt to personate any other person for the purpose of voting at any election or who being disqualified for any of the causes mentioned in this Act shall vote or attempt to vote at any election shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding two hundred pounds or be imprisoned

31 VICTORIA No. 37.

Act of bribery to
make void election.
22 Vic. No. 20 s. 60.
1 Pring 535.

Principals to be bound
by acts of agents.
22 Vic. No. 20 s. 61.
1 Pring 535.

Penalty for neglect by
returning officer &c.
22 Vic. No. 20 s. 65.
1 Pring 536.

Governor may miti-
gate or remit penalty.

Penalty for twice
polling or personating
voter.
22 Vic. No. 20 s. 64.
1 Pring 536.

31 VICTORIA No. 37. imprisoned with or without hard labor for any term not more than two years at the discretion of the judge who shall try the case.

Penalty for receiving
or offering reward for
voting or withholding
vote.
22 Vic. No. 20 s. 63.
1 Pring 535.

53. Every person who having or claiming to have any right to vote in any election of a member of Assembly for any electoral district shall directly or indirectly ask receive or take any money or other reward by way of gift employment or other reward whatsoever for himself or any of his family or kindred friends or dependents as a consideration or inducement expressed implied or understood for giving his vote or for abstaining from giving his vote in any such election and every person who by himself his friends or by any person employed by him shall by any gift or reward or by any promise or agreement or security for any gift or reward procure any person to give his vote in any such election or to abstain from giving the same shall for every such offence forfeit the sum of fifty pounds to the person who shall *bonâ fide* for his own use and not collusively first sue for the same.

Penalty for acts of
bribery.
22 Vic. No. 20 s. 62.
1 Pring 535.

54. Every person whether or not such an authorised agent who shall have committed any of the acts hereby declared to be acts of bribery and corruption shall be deemed guilty of a misdemeanor and may be indicted in the Supreme Court or in any circuit court or court of quarter sessions as for a misdemeanor and punished with fine not exceeding two hundred pounds or imprisonment not exceeding six months on the complaint of Her Majesty's Attorney-General or of any registered elector of the electoral district wherein such act of bribery or corruption shall be alleged to have been committed.

Persons wilfully mis-
leading clerk of petty
sessions liable to
penalty.
22 Vic. No. 20 s. 50.
1 Pring 535.

55. Every person who shall wilfully mislead any clerk of petty sessions in the collection or preparation of the lists or who shall wilfully cause any false or fictitious name or qualification to be inserted therein shall on conviction of any such offence before any two or more justices in petty sessions be liable to a penalty not exceeding twenty pounds or to imprisonment for any term not exceeding one month at the discretion of such justices.

False answers punish-
able as misdemeanor.
22 Vic. No. 20 s. 49.
1 Pring 535.

56. Every person who shall wilfully make a false answer to any of the questions hereinbefore authorised or who shall wilfully make a false declaration in manner aforesaid or shall wilfully make any false statement orally or in writing in any court of revision in anywise affecting or relating to the qualification of himself or any other person shall be deemed guilty of a misdemeanor and on conviction thereof shall suffer the penalties of wilful and corrupt perjury.

Commencement and Short Title.

Commencement of
Act.
Short title.

57. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Elections Act of 1867.*"

An Act to Consolidate and Amend the Laws relating to the Supreme Court.

31 VICTORIA No. 23.

[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to the Supreme Court Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Preamble.

The Supreme Court.

1. The Supreme Court of Queensland shall henceforth be holden under this Act.

The Supreme Court to be held under this Act.

2. The said Supreme Court shall continue to be holden at Brisbane and to be a court of record and shall be the Supreme Court for Queensland and its dependencies Provided and it is declared that the said Supreme Court heretofore and now holden and henceforth to be holden is and shall be deemed and taken to be the same court.

25 Vic. No. 13 s. 2.
2 Pring 1594.

Supreme Court to continue holden at Brisbane and be a court of record and a superior court.

25 Vic. No. 13 s. 15.
2 Pring 1597.

Proviso to be deemed the same court.

Seals of the Court.

3. The said Supreme Court shall have and use as occasion may require a seal having inscribed on a label thereon the words "The Seal of the Supreme Court of Queensland" and such other seals as may be required for the business of the said court and the offices thereof and such seal and seals shall be in the keeping of the Chief Justice of the said court or in case of a vacancy of such office then in the keeping of the senior Puisne Judge thereof.

Court shall have and use seals.

Seals in keeping of Chief Justice or senior puisne judge.

25 Vic. No. 13 s. 15.
2 Pring 1597.

4. A judge of the Supreme Court may have a stamp for impressing his name on summonses issued from and orders made in his chambers and such impression on any such summons or order otherwise duly sealed shall have the force and effect of the judge's signature and the court or a judge may take judicial notice of such impression on any such summons or order otherwise duly sealed And such impression may be impressed by the judge's associate or clerk.

Judge's stamp.

Reg. Gen. June 4
1866 pl. 41.

5. The proper officer shall officially recognise such impressions on such precepts summonses and orders but no orders so impressed shall be sealed until the consent or judge's minute shall have been delivered to the sealing officer.

Orders to be sealed.
Reg. Gen. June 4
1866 pl. 42.

6. A judge of the Supreme Court may have a chamber seal and such seal on any such summons or order or on any document used at chambers shall have the force and effect of a seal of the Supreme Court office.

Judges' chamber seal.

7. No document whatever shall be sealed and no judge's order shall be impressed with his name unless all documents whereon the authority for the sealing and impression is or purports to be founded shall then be on the file unless the court or a judge shall otherwise order.

Authority to be filed.
Regulation January
9 1865 pl. 2.

The Judges of the Supreme Court.

8. Such Supreme Court shall consist of and be holden by and before a judge or judges not exceeding three in number each of whom shall be a barrister of England or Ireland or an advocate of Scotland

Judges may be appointed.

25 Vic. No. 13 s. 3.
2 Pring 1594.

OR

31 VICTORIA No. 23. or a barrister of the courts of New South Wales Victoria or of the said court not previously admitted in any of the superior courts of Westminster Dublin or Edinburgh of not less than five years' standing and such judges shall be appointed by the Governor with the advice of the Executive Council by commission in Her Majesty's name Provided and it is declared that the commissions of the present judges of the said Supreme Court shall be continue and remain in full force under this Act Provided also that only two judges shall receive commissions as aforesaid until the number of judges shall be increased by an Act of the Legislature.

Commission of judges.

25 Vic. No. 13 s. 5.
2 Pring 1595.

9. The commissions of the present and any future judges of the said Supreme Court shall be continue and remain in full force during his or their good behavior notwithstanding the demise of Her Majesty or of Her Heirs and Successors any law usage or practice hereof in anywise notwithstanding Provided always that it shall be lawful for Her Majesty Her Heirs and Successors to remove any such judge or judges upon the address of both Houses of the Legislature.

Judges' salaries.

25 Vic. No. 13 s. 6.
2 Pring 1595.

10. Such salaries as shall be settled upon such judges for the time being by Act of Parliament or otherwise and all such salaries as may in future be granted by Her Majesty or otherwise to any future judge of the Supreme Court shall in all time coming be paid and payable to every such judge for the time being so long as his patent or commission shall continue or remain in force.

Judges' pensions.

25 Vic. No. 13 s. 8.
2 Pring 1595.

11. Pensions shall be demandable by the judges of the said Supreme Court to the amount of seven-tenths of their actual salaries on permanent infirmity or disability or after fifteen years' service as a judge in the colony Provided always that the pension demandable by the present puisne judge of the said Supreme Court shall be one thousand and fifty pounds (being seven-tenths of the actual salary payable to the judges of the Supreme Court of New South Wales under the Imperial Act eighteen and nineteen Victoria chapter fifty-four) Provided also that the period served by the said puisne judge as resident judge of Moreton Bay shall be computed in reckoning the total period of his service Provided also and it is declared that the several periods heretofore respectively served by each of the present judges shall be severally computed in reckoning the total periods of their respective services.

Judges not to hold other office.

25 Vic. No. 13 s. 9.
2 Pring 1595.

12. No judge of the said court shall be capable of accepting taking or performing the duties of any other office or place of profit or emolument within the Colony of Queensland except as next hereinafter provided and excepting such office as may be granted to such judge under Her Majesty's sign-manual or by authority granted under the great seal of the High Court of Admiralty of England or as may be cast upon him by law and every such acceptance taking or performance of the duties of any such other office shall be deemed in law an avoidance of his office of judge and his office and commission shall be thereby in full superseded and his salary thereupon cease.

Judges to be two in number until provision.

26 Vic. No. 9 s. 1.
2 Pring 1609.

13. The judges of the Supreme Court shall be two in number until further provision to be made in such behalf.

Salaries of the Judges.

Salary.

26 Vic. No. 9 s. 3.
2 Pring 1609.

14. The salary of the present Chief Justice of Queensland shall be at the rate of one thousand five hundred pounds per annum and the salary

salary of the present Puisne Judge shall be at the rate of two thousand pounds per annum and the salary for any puisne judge hereafter to be appointed shall be at the rate of twelve hundred pounds per annum.

31 VICTORIA No. 23.

25 Vic No. 13 s. 7.
2 Pring 1595 and
schedule *ib.* 1608.

Constitution of the Court.

15. Every judge of the said Supreme Court of the Colony of Queensland shall have power in vacation if under the special circumstances of the case he shall see fit to make all such orders and grant all such writs as can only under ordinary circumstances be made or granted by the court and every such order and writ shall have the same force and effect as a rule of the said court without the necessity for any further motion or order of the said court. Provided that every such order or writ so made shall be liable to be set aside on application to be made to the said court by motion or notice at any time within the first four days of the next ensuing term.

Power of judges in
vacation.
25 Vic. No. 13 s. 11.
2 Pring 1595.

16. Whenever there shall be more than one judge of the Supreme Court one of them may be styled "The Chief Justice of Queensland" and may be designated as such in the commission to be given to him as in this Act. Provided and it is declared that the present and any future Chief Justice of Queensland is and shall be the Chief Justice of the said Supreme Court.

Chief Justice.
25 Vic. No. 13 s. 4.
2 Pring 1594.
27 Vic. No. 14 s. 1.
3 Pring 312.

17. Every writ process or other like proceeding and every commission issuing out of the Supreme Court shall in all cases civil criminal or other bear date the day on which the same shall be issued and shall be tested in the name of the Chief Justice or in case of a vacancy of such office then in the name of the senior puisne judge of the said court.

Proceedings to be
dated and how tested.
27 Vic. No. 14 s. 5.
3 Pring 313.

18. All puisne judges of the Supreme Court of Queensland shall be and be held to be justices thereof.

Puisne judges to be
also justices.
27 Vic. No. 14 s. 6.
3 Pring 313.

19. If whenever there shall be only two judges of the said Supreme Court a difference of opinion shall arise between the said two judges respecting the judgment or decision to be given or decree or order to be made by them or the said court upon any subject matter suit cause action or proceeding brought before them or the said court the judgment decision decree or order of the Chief Justice shall be the judgment decision decree or order of the said court.

Judgment of the
Chief Justice to be
judgment of the court
26 Vic. No. 9 s. 2.
2 Pring 1609.

Common Law and General Jurisdiction.

20. Provided and be it declared and enacted that all laws and statutes in force within the realm of England at the time of the passing of the Imperial Act of the ninth year of King George the Fourth chapter eighty-three (not being inconsistent herewith or with any law or statute now in force in this colony) shall be applied in the administration of justice in the Courts of Queensland so far as the same can be applied within the said colony. But nothing herein shall have the effect of extending to Queensland the operation of any Imperial Act not now extending to Queensland or of diminishing the present jurisdiction power or authority of the said Supreme Court or of the judges or any judge thereof.

Laws of England to
be applied in the
administration of
justice.
9 Geo. 4 c. 83 s. 24.
1 Pring 154.

Proviso not to extend
to Queensland.
Imperial Acts not
now in force there.

21. The said court or a judge thereof in the administration of the law of Queensland shall have the same jurisdiction power and authority as the Superior Courts of Common Law and the High Court of Chancery in England or any or either of the last-mentioned courts respectively or any judge thereof have or has in the administration of the

Common law and
general jurisdiction
of the court.
25 Vic. No. 13 s. 16.
2 Pring 1597.

31 VICTORIE No. 23. the law of England and the said court shall have cognizance of all civil
 Jurisdiction at com- pleas and shall have jurisdiction within the said Colony of Queensland and
 mon law. its dependencies to hear and determine all actions whatsoever real
 personal and mixed as fully and amply to all intents and purposes as Her
 Majesty's Courts of Queen's Bench Common Pleas and Exchequer of Pleas
 at Westminster or either of them lawfully have or hath in England.

Equitable Jurisdiction.

Equitable juris- 22. The said court shall have equitable jurisdiction within the
 diction. said colony of Queensland and its dependencies and such power and
 25 Vic. No. 13 s. 22. authority to do exercise and perform all acts matters and things necessary
 2 Pring 1598. for the due execution of such equitable jurisdiction as is possessed by
 the Lord High Chancellor or other equity judges of England in the exercise
 of similar jurisdiction within the realm of England and also to do all such
 other acts matters and things as can and may be done by the said Lord High
 Chancellor or other equity judges within the realm of England in the
 exercise of the common law jurisdiction to him belonging and to appoint
 guardians and committees of the persons and estates of infants and of
 natural-born fools lunatics and persons deprived of understanding and
 reason by the act of God and unable to govern themselves or their estates
 and for that purpose to inquire into hear and determine by inspection of
 the person the subject of such inquiry or by examination on oath or
 otherwise of the party in whose custody or charge such person may be or
 of any other person or persons or by such other ways and means by which
 the truth may be best discovered and to act in all cases whatsoever as fully
 and amply to all intents and purposes as the said Lord High Chancellor
 or other equity judges or the grantee from the Crown of the persons and
 estates of infants and lunatics natural-born fools and persons deprived of
 understanding as aforesaid may now lawfully do.

Ecclesiastical Jurisdiction.

Ecclesiastical juris- 23. The Supreme Court shall have the same powers and its grants
 diction. and orders shall have the same effect throughout all Queensland and in
 20 & 21 Vic. c. 77 relation to the personal estate in all parts of Queensland of deceased
 s. 23. persons as the Prerogative Court of the Archbishop of Canterbury and its
 25 Vic. No. 13 s. 24 grants and orders respectively had aforesaid in the province of Canterbury
 2 Pring 1598. or in the parts of such province within its jurisdiction and in relation to
 those matters and causes testamentary and those effects of deceased
 persons which were within the jurisdiction of the said prerogative court
 and all duties which by statute or otherwise were aforesaid imposed on or
 should be performed by ordinaries generally or on or by the said prerogative
 court in respect of probates administrations or matters or causes testamen-
 tary within their respective jurisdictions shall be performed by the Supreme
 Court and the said court shall have full and entire ecclesiastical juris-
 diction throughout Queensland and its dependencies Provided that no
 suits for legacies or suits for the distribution of residues shall be
 entertained save by the Supreme Court in equity.

Proviso.

Criminal Jurisdiction.

Criminal jurisdiction. 24. The said court shall have jurisdiction to inquire of hear and
 25 Vic. No. 13 s. 19 determine within the said Colony of Queensland and its dependencies all
 2 Pring 1597. treasons felonies misdemeanors and offences of what nature or kind soever
 and wheresoever committed which can or may be inquired of heard and
 determined

determined in Her Majesty's Court of Queen's Bench at Westminster or in the Central Criminal Court in London or by judges of assize or oyer and terminer and general gaol delivery in England. 31 VICTORIA No. 23.

25. All indictments in which such treasons felonies misdemeanors and offences are charged may be preferred before any one or more judges of the said Supreme Court sitting in open court in Brisbane and all issues at law joined on every such indictment shall be determined by any one or more judge or judges of the said court and all issues of fact joined on every such indictment shall be tried by and before any one or more such judge or judges and a jury of twelve men to be summoned impanelled and sworn according to law. Proceeding by information. 25 Vic. No. 13 s. 20. 2 Pring 1597.

26. Error and appeal shall lie upon any proceeding had under the last preceding section in the same manner as upon any like proceeding had before a circuit court or an inferior court. Error.

27. And be it enacted and declared that all treasons felonies misdemeanors and offences cognizable in the said court or at any sittings thereof to be holden pursuant to the provisions of this Act in the said colony shall be prosecuted by information in the name of Her Majesty's Attorney-General or Solicitor-General for the said colony or of such other person as the Governor of the said colony may appoint who shall respectively perform the duties of a grand jury until other provisions shall be made in that behalf by Act of the Legislature. Proceeding by information. 25 Vic. No. 13 s. 20. 2 Pring 1597. 5 Vic. No. 4 s. 10. 1 Pring 744.

28. In order to prevent persons committed to gaol upon charges of felony or misdemeanor and against whom Her Majesty's Attorney-General or other duly appointed prosecuting officer declines to file an information from suffering unnecessary imprisonment It shall be lawful for the Attorney-General in respect of any such persons to issue at any time a warrant under his signature in the form in the schedule to this Act annexed addressed to the sheriff or gaoler in whose custody any such prisoner shall be and in and by such warrant to authorise such sheriff or gaoler (who is hereby also authorised so to do) immediately and without fee or reward to discharge the prisoner therein mentioned from imprisonment in respect of the offence mentioned in the said warrant and if any such sheriff or gaoler shall refuse or neglect so to do he shall for every such offence forfeit and pay to the use of Her Majesty a fine or penalty of fifty pounds to be recovered by action of debt in the name of the Attorney-General. Attorney-General to issue warrant for discharge of prisoner against whom he does not file information. 27 Vic. No. 14 s. 23. 3 Pring 316.

29. It shall be lawful for any person by leave of the said court to exhibit a criminal information against any other person for any crime or misdemeanor not punishable by death alleged to have been by such person committed and it shall not be necessary for any person applying to the court for leave to exhibit such criminal information to file any exculpatory affidavits unless required by order of the court so to do and every criminal information exhibited by leave of the court shall be in the name of Her Majesty the Queen and upon the information of the person to whom such leave has been granted and the prosecutor shall file such information in the said court and the same shall be heard tried and determined in the same manner as any other indictment hereinbefore required to be heard tried and determined in the said court or before any one or more judges thereof. Criminal information. 25 Vic. No. 13 s. 21. 2 Pring 1597.

31 VICTORIA No. 23.

Circuit Courts.

Circuit courts.

25 Vic. No. 13 s. 30.

2 Pring 1600.

30. It shall be lawful for the Governor of the said colony by any orders to be made by him with the advice of the Executive Council thereof from time to time made and proclaimed to define the limits of districts within and the number of times at which Circuit Courts shall be holden in the said colony and the said limits and times to alter and vary as he shall with the advice aforesaid deem necessary and to direct that Circuit Courts shall be holden at such towns or places within those limits as he shall with the advice aforesaid think fit to appoint and every such Circuit Court shall be holden in and for such district by one or more judge or judges of the Supreme Court who shall fix the dates for the holding of the same and every such Circuit Court shall be a Superior court of record and shall have full power as such superior court to punish for contempt and shall have the same power authority and jurisdiction to hear and determine all civil issues to be tried within the limits of the circuit district in which the same is held and all treasons felonies misdemeanors and offences wheresoever committed as courts of *nisi prius* assize oyer and terminer and general gaol delivery in England possess and also to inquire into and assess damages in any action at law commenced in the said Supreme Court and all persons convicted in such Circuit Court of any treason felony misdemeanor or other offence cognizable therein shall be subject and liable to the same penalties and punishments as by law could be inflicted on them if convicted thereof in the said Supreme Court and every such Circuit Court shall stand in the same relation to the said Supreme Court with respect to civil issues as the court of *nisi prius* in England stands with respect to the superior court from which the *nisi prius* record is sent and in the same relation to the said Supreme Court with respect to Crown issues as the court of oyer and terminer and general gaol delivery in England stands with respect to the Court of Queen's Bench Provided however that it shall not be necessary to issue any special commission to any judge or judges of the said Supreme Court to empower him or them to hold any such Circuit Court.

Opening circuit court.

25 Vic. No. 13 s. 31.

2 Pring 1600.

31. Every such Circuit Court shall be opened by the judge or judges of assize at the time and place proclaimed Provided however that should such judge or judges not arrive at the place where such court is to be holden in time to open the same on the day appointed by proclamation it shall be lawful for the said judge or judges or for some other judge of the said Supreme Court to open and hold the said circuit court on any day or days following the day upon which the same should have been opened and held and the proceedings of such Circuit Court shall be as valid as if the same had been duly opened and held at the appointed time.

Declaratory clause as to prosecutor in circuit courts.

5 Vic. No. 4 s. 10.

1 Pring 744.

32. And be it declared and enacted That all crimes and offences which have been and are respectively cognizable in the said several circuit courts shall until the constitution of grand juries within the said colony continue to be so cognizable and may be tried in the said courts respectively upon information or informations exhibited therein by and in the name of Her Majesty's Attorney or Solicitor-General for the time being of the said colony or either of them or in case of their absence from any such court by and in the name of such other person as the Governor for the time being of the said colony shall have appointed or shall hereafter appoint in that behalf.

Special

Special Commissions.

31 VICTORIA No. 23.

33. It shall be lawful for the Governor in Council at any time to issue a special commission to any one or more district court judge or judges or to any one or more barrister or barristers of five years' standing appointing him or them to act as judge or judges of the Supreme Court of Queensland for the trial of issues civil or criminal at any circuit court or court of gaol delivery or at remote places at which a judge of the Supreme Court of Queensland could not attend without detriment to the ordinary business of such court and thereupon the person or persons so appointed shall at the place and for the time specified in such commission have and exercise all the powers and privileges and discharge all the duties of a judge of the Supreme Court of Queensland.

Special commission may issue to one or more judges of district courts enabling them to discharge duties of a judge of the Supreme Court at remote places.
22 Vic. No. 18 s. 26.
1 Pring 500.

Transfer of Jurisdiction.

34. The Supreme Court of Queensland shall be held to be and to have always been the Supreme Court within the meaning of the laws statutes and ordinances which at the time when the Order of Her Most Excellent Majesty in Council dated the sixth day of June one thousand eight hundred and fifty-nine and empowering the Governor of Queensland to make laws and to provide for the administration of justice in the said colony came into operation were in force within the Colony of Queensland and shall be held to have and to have always had within the limits of the said colony all the authorities powers and jurisdiction of the Supreme Court of New South Wales as the same existed at the time aforesaid and a judge or the judges of the Supreme Court of Queensland shall be held to have and to have always had all the authorities powers and jurisdiction of a judge or the judges of the Supreme Court of New South Wales as the same existed at the time aforesaid and the Chief Justice of Queensland shall be held to be and to have always been the Chief Justice of the Supreme Court of Queensland and all laws statutes and ordinances wherein the *New South Wales Government Gazette* is mentioned shall be read as if instead thereof the *Queensland Government Gazette* were expressly mentioned therein and all proceedings whatsoever civil criminal or other heretofore had or taken or hereafter to be had or taken shall be as good valid and effectual in law to all intents and purposes whatsoever as if the Supreme Court of Queensland or the Chief Justice of Queensland or the *Queensland Government Gazette* had been expressly mentioned in such laws statutes and ordinances wherever the Supreme Court of New South Wales or the Chief Justice of the Supreme Court of New South Wales or the *New South Wales Government Gazette* is mentioned or referred to.

Declaring authority of Supreme Court and judges to be same as that which was in Supreme Court of New South Wales.
27 Vic. No. 14 s. 1.
3 Pring 312.

35. All the authorities powers and jurisdiction of the Supreme Court of New South Wales and of any judge thereof over or to be exercised within or in relation to the colony of Queensland shall be held to have been transferred to and vested in the said Supreme Court of Queensland and the judges thereof immediately upon the creation of the said court and to have ceased and determined so far as related to the said Supreme Court of New South Wales and the judges thereof.

Authorities of Supreme Court of New South Wales ceased upon creation of Supreme Court of Queensland.
27 Vic. No. 14 s. 2.
3 Pring 313.

36. Wherever in any of the laws statutes or ordinances originally made or enacted in reference to the colony of New South Wales and now in force in the colony of Queensland New South Wales Sydney or the harbor of Port Jackson is mentioned or referred to the same shall unless the

Brisbane to be read for Sydney in laws and statutes and offices of New South Wales as if offices of Queensland.

31 VICTORIÆ No. 23. the context indicate the contrary be read as if Queensland Brisbane or the port of Moreton Bay had been expressly mentioned therein and wherever in any of such laws statutes or ordinances mention is made of any office or employment of or in New South Wales or of the officer or public servant holding or being employed in such office or employment the same shall be read as if such office or employment officer or public servant where expressly mentioned as an office or employment or officer or public servant of or in Queensland and all proceedings whatsoever civil criminal or other heretofore had or taken or hereafter to be had or taken shall be as good valid and effectual in law to all intents and purposes whatsoever as if Queensland Brisbane or the port of Moreton Bay had been expressly mentioned in such laws statutes and ordinances wherever New South Wales Sydney or the harbor of Port Jackson is mentioned and as if all offices employments officers and public servants had been expressly mentioned as offices employments officers and public servants of and in Queensland wherever mention is made of the corresponding offices employments officers and public servants of and in New South Wales.

Saving Acts passed by the Legislature of Queensland and the powers of the Supreme Court.
27 Vic. No. 14 s. 4.
3 Pring 313.

37. Nothing herein contained shall revive re-enact or give force or validity to any law statute or ordinance heretofore repealed by or repugnant to or inconsistent with any Act or statute heretofore enacted by the Legislature of Queensland or shall lessen diminish or restrain the authorities powers or jurisdiction of the Supreme Court of Queensland or the judges thereof.

Power of a Single Judge Sitting in Court.

One judge may sit alone in equity and for other purposes.
27 Vic. No. 14 s. 7.
3 Pring 313.
25 Vic. No. 13 s. 23.
2 Pring 1598.

38. It shall be lawful for any one of the judges of the Supreme Court without the assistance of any other judge of the said court to hear and determine all suits and matters at any time depending before the said court in its equitable ecclesiastical and insolvency jurisdiction or in its jurisdiction in respect of infants lunatics idiots and persons of unsound mind or in respect of special cases and all such suits and matters depending before the said court in its matrimonial jurisdiction as may be heard and determined by the judge ordinary sitting alone and to exercise any jurisdiction conferred by any law custom or statute on the said court in equity (save jurisdiction in appeal) and every decree or order of the judge exercising such sole jurisdiction shall unless appealed from be as valid and effectual to all intents and purposes whatever as if such decree or order had been pronounced and made by the full court Provided always that the decrees and orders pronounced and made by such judge shall in all cases be subject to appeal to the full court in such manner and upon such terms as shall be ordered in that behalf by any general rules or orders of the Supreme Court made as hereinafter provided Provided and it is declared that nothing in this Act contained shall affect any commission heretofore issued to the present Chief Justice of the said court as judge in equity or judge ordinary or to the present Puisne Judge as judge in insolvency but the same are by this Act confirmed.

27 Vic. No. 14 s. 17.
3 Pring 315.
28 Vic. No. 25 s. 3.
2 Pring 149.

Officers of the Court.

Officers of the court.
25 Vic. No. 13 s. 12.
1 Pring 1596.

39. The said court shall have a master in equity who shall be a practising barrister of England or Ireland or advocate of Scotland of not less than three years' standing or a practising barrister of New South Wales or Victoria or of the said court not previously admitted in any of the

the superior courts of Westminster Dublin or Edinburgh of not less than 31 VICTORIE No. 23. three years' standing or an attorney at law of not less than seven years' standing and such master in equity when appointed shall if required perform the duties and discharge the office of chief commissioner of insolvency and the said court shall also have a prothonotary and registrar and such and so many other officers as to the judge or judges for the time being of the said court shall appear to be necessary for the administration of justice and the due execution of all the powers and authorities of the said court and such master prothonotary and registrar and other officers shall respectively draw up prepare and settle all such and the like orders rules decrees reports and proceedings as are usually drawn up prepared and settled by persons holding similar offices in the superior courts of law and equity in Westminster or in such other manner as may have been provided for by any legislative enactment in force in the said colony without any charge whatsoever and the appointment of every such person to any such office as is hereinbefore expressly named shall be made by the Governor in Council and shall be by commission in Her Majesty's name and under the great seal of the colony and every such officer shall hold his appointment during ability and good behavior but it shall be lawful for the Governor with the advice aforesaid to remove any such officer for inability or misbehavior and all persons who may be appointed to any other office in the said court than those hereinbefore particularly enumerated shall be so appointed by the Governor of the said colony with the advice aforesaid and no new office shall be created in the said court unless the judge or judges thereof shall certify by writing under his or their hand or hands to the said Governor that such new office is necessary Provided that until such appointments be made respectively the registrar and other officers of the Supreme Court as constituted before the passing of this Act shall exercise the like powers and authorities as were by them severally and respectively exercised and discharged in the said court up to the time of the passing of this Act.

Counsel.

40. Any attorney solicitor or proctor of good repnte in his profes- Attorneys in certain cases may be called to the bar upon motion in court. sion having been three years in actual practice in Great Britain or the colony who shall pass the examination in classics or mathematics prescribed for persons seeking admission to the bar or who shall have a 25 Vic. No. 13 s. 14. certificate of honor or other academical distinction in classics mathematics or law from any university or college within the British dominions may 2 Pring 1596. upon motion in open court be called and admitted a barrister-at-law Provided that when so called and admitted he shall cease to practise as an attorney solicitor or proctor and shall be struck off the roll of the Supreme Court but nothing herein contained shall extend to relieve persons so called and admitted from any action suit penalty or liability for misconduct neglect or other matter in the practice of his profession of an attorney solicitor or proctor nor to disable him from recovering the costs and charges due to him when so called and admitted or from asserting his right of lien or from being again admitted to practice as an attorney solicitor or proctor if disbarred by motion in open court at his own request without having been guilty of misconduct in the exercise of his profession of a barrister-at-law.

41. Every

31 VICTORIA No. 23.

Conveyancing how prohibited.

11 Vic. No. 33 s. 13.
2 Pring 1588.

41. Every person who shall for or in expectation of any fee gain or reward directly or indirectly draw or prepare any conveyance or other deed or instrument in writing relating to any real estate or any proceedings in law or equity (other than and except barristers or attorneys and solicitors of the Supreme Court or certificated conveyancers as hereinafter mentioned and other than and except persons solely employed to engross any deed instrument or other proceeding not drawn or prepared by themselves and for their own account respectively and other than and except public officers drawing or preparing official instruments applicable to their respective offices and in the course of their duty) shall be deemed guilty of a contempt of the Supreme Court and shall and may be punished accordingly for every such offence upon the application of any person complaining thereof or shall for every such offence forfeit and pay the sum of twenty pounds to be sued for and recovered in a summary way before any two or more justices of the peace.

Conveyancers.

Certificated conveyance.

11 Vic. No. 33 s. 14.
2 Pring 1588.

Notice.

42. Every person except a barrister or attorney and solicitor of the Supreme Court who shall be desirous of practising as a conveyancer shall one month at least before making application as hereinafter mentioned give notice in such manner and form as the judges of the Supreme Court shall direct of his intention to apply to the said court for a certificate to practise as a conveyancer and any person having given such notice as aforesaid shall be at liberty to apply to the said court touching his fitness to practise as a conveyancer and thereupon the judges or one of them shall direct that the applicant shall be examined at the earliest convenient time by the master in equity of the said court (or such other one or two officers of the court as the judges may appoint to assist him) touching his the applicant's skill and knowledge in conveyancing as well as to his character for integrity and the said master or his assistants shall be at liberty to put such questions to such applicant in respect to the matters aforesaid and to require such proof of his character as shall be deemed proper and if the said applicant shall be considered of competent ability and knowledge and a fit and proper person to practise as a conveyancer then the said master shall and he is hereby empowered to grant a certificate to such applicant authorising him to draw fill up and prepare any conveyance will deed bond lease or agreement for a lease or other contract whatsoever of or relating to any estate or property whether real or personal and every such certificate shall be enrolled in the office of the registrar of the Supreme Court whereupon such applicant shall be deemed a certificated conveyancer and entitled to practise as such with power of appeal to the court in case of refusal of such certificate by the master as aforesaid.

Examination.

Certificate.

The Sheriff.

Duty of sheriff.

25 Vic. No. 13 s. 33.
2 Pring 1600.

43. It shall be lawful for the Governor with the advice of the Executive Council of the said colony from time to time to appoint a sheriff for the Colony of Queensland and its dependencies who shall hold office during pleasure that such sheriff by himself or his officers to be by him appointed and duly authorised under his hand and seal and for whose acts he shall be accountable during his continuance in such office and their employment by him shall execute all writs summonses rules orders warrants precepts commands and process of the said court which may be

from

from time to time directed to him and shall make return of the same to the said court together with the manner of the execution thereof as he may be thereby required and shall receive and detain all such persons as shall be committed into his custody and shall discharge such persons as he may be by law enjoined.

44. It shall be lawful for the Governor in Council of the said colony to appoint deputies for the said sheriff in the districts in which circuits of the said court are to be held which deputies shall when required by the said court or any judge thereof by any writ process or other proceeding to them respectively directed or in any other manner perform within such districts all such acts as the sheriff would be bound to perform were he personally present and acting in such district.

Deputies of the sheriff to be appointed by the Governor.
25 Vic. No. 13 s. 34.
2 Pring 1601.

45. It shall be lawful for the Governor at any time or times hereafter as he shall see fit by warrant under his hand and seal to nominate and appoint some fit and proper person to act as and be the sheriff in and for every or any such circuit district and the sheriff first so appointed shall continue in office until he shall be re-appointed or another person shall be appointed in his stead in manner next hereinafter mentioned and it shall be lawful for the Governor on the first Monday in the next and every succeeding year to nominate and appoint in manner aforesaid the same or some other fit and proper person to act as and be the sheriff for every or any such district for the year next following and every such sheriff so appointed shall as soon as conveniently may be take before one of the judges of the Supreme Court the oath of allegiance and an oath faithfully to execute his office and every sheriff appointed as last aforesaid shall continue in office during the space of one whole year then next following and until he be re-appointed or another person be appointed and sworn into office in his stead in manner aforesaid and if the sheriff for any such circuit district shall die or depart from the said colony or become otherwise incapable of executing the duties of his office then and in such case another person shall be appointed and sworn in like manner and such person shall continue in office for the remainder of the year and until he be re-appointed or another person be appointed and sworn into office in his stead as aforesaid and every such sheriff during the time of his continuance in office shall in and for the district for which he shall have been so appointed have and execute the same powers and duties and enjoy the same privileges and be subject to the same liabilities in all respects as by law belong to the office of a sheriff and the powers duties privileges and liabilities of the sheriff of Queensland shall within such district cease and determine.

Governor may appoint district sheriffs.
5 Vic. No. 4 s. 11.
1 Pring 744.

Continuance of such sheriff's in office.

Powers &c. of such sheriffs.

46. The said sheriff and each of such deputy sheriffs respectively shall give security to Her Majesty Her Heirs and Successors by bond or recognizance of himself and two responsible sureties or otherwise in such reasonable amount as may be fixed by the Governor in Council conditioned for the due performance by such sheriff and deputy sheriffs respectively of the duties of their offices and for the payment by him and them as he and they may be respectively directed of all moneys which shall come to his or their hands respectively.

Sheriff's recognizances.
25 Vic. No. 13 s. 35
2 Pring 1601.

47. Whenever the said court or any judge thereof shall direct any process to issue against the said sheriff or award any process in any cause matter or thing wherein the said sheriff on account of his being related to any of the parties thereto or by reason of any good cause of challenge

Power to appoint person to execute process where sheriff ought not to execute.
25 Vic. No. 13 s. 36.
2 Pring 1611.

31 VICTORIA No. 23. which would be allowed against any sheriff in England ought not to execute the same it shall be lawful for the said court or for any judge thereof to appoint some other fit person to execute the same and whenever the process of the court is to be executed at a distance of one hundred miles from the place at which the said court is holden the said sheriff shall not be compelled to go in person or by his officers to execute the same and it shall be lawful for the said court or for any judge thereof upon the application of any person or party in the cause or matter to order that such process be directed to some fit person instead of to the said sheriff and executed in such manner and under such terms and conditions as the said court or judge shall deem meet and in any such case the said sheriff shall not be responsible for the acts or defaults of the person named in such process but the party aggrieved by any act or default of such person shall have the like remedy against him that he might have had against the said sheriff in case such process had been directed to the said sheriff and the act or default been committed by him. Provided that in any such case all fees of right payable to the sheriff by the person against whom such process is directed shall with the exception of those for registering the warrant and returning the same be paid to the person on whose behalf such process was issued.

Sheriff may sell property without taking out an auctioneer's license.
25 Vic. No. 13 s. 39.
2 Pring 1602.

Sheriff may act as justice of peace.
25 Vic. No. 13 s. 44.
2 Pring 1603.

Sheriff not liable in an action of debt if debtor escape.
25 Vic. No. 13 s. 46.
2 Pring 1603.

Deposit for expenses to be made with the sheriff.

Power to make rules of practice.
25 Vic. No. 13 s. 67.
2 Pring 1607.
27 Vic. No. 14 s. 20.
3 Pring 316.

When rules shall take effect.
25 Vic. No. 13 s. 67.
2 Pring 1607.

48. It shall be lawful for the said sheriff by himself or his deputy to sell by auction all property of whatever nature which may be taken by him in execution without having taken out an auctioneer's license anything in any law now in force to the contrary notwithstanding.

49. It shall be lawful for the Sheriff of Queensland to act as a justice of the peace any law or custom to the contrary notwithstanding.

50. If any debtor in execution shall escape out of legal custody after the passing of this Act the sheriff deputy sheriff bailiff or any other person having the custody of such debtor shall be liable only to any action upon the case for damages sustained by the person at whose suit such debtor was taken or imprisoned and shall not be liable to any action of debt in consequence of such escape.

51. On any writ or other process being left with the sheriff for execution by him the person so leaving such writ or other process as aforesaid shall if required deposit with the sheriff a sufficient sum for the payment of the necessary expenses in and about the execution of the writ or other process and if any dispute should arise as to the amount to be deposited as aforesaid a reference shall be made to the registrar of the Supreme Court whose decision shall be final unless a judge shall otherwise order.

Power to Make Rules for regulating Pleading and Practice and Forms of Process and the Duties of Officers.

52. It shall be lawful for the judge or judges or a majority of them for the time being of the said Supreme Court of which majority the Chief Justice shall be one to make such rules for regulating the forms of process and mode of pleading in the said court and for the practice of the same in all its various departments and also for the government and conduct of the officers and ministers of the said court and such rules from time to time to repeal vary and alter as occasion may require.

53. Every such rule save as hereinafter provided shall take effect from the promulgation thereof by the said court. Provided that

that all the rules and orders for regulating the process pleading and practice and other matters hereinbefore enumerated now in force in the said Colony of Queensland at the commencement of this Act shall continue and be in force in the said Supreme Court of the Colony of Queensland until repealed by the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one by rules made by virtue of the provisions herein contained except so far as any of them may be inconsistent with or repealed by the provisions of this Act.

Admission of Barristers and Solicitors.

54. It shall be lawful for the judge or judges or such majority as in the section last but one preceding mentioned to make such rules for regulating the admission of barristers and of attorneys solicitors and proctors to practise in the said court and such rules to repeal vary and alter as occasion may require. Provided that every such rule for regulating the admission of barristers and of attorneys solicitors and proctors when so made shall be sent by the registrar to the Colonial Secretary of the said colony and by him laid before the Legislative Council and the Legislative Assembly without delay and it shall be lawful for the said Legislative Council or Legislative Assembly at any time within one calendar month after the same may have been laid before such Legislative Council or Legislative Assembly to present an address to the Governor of the said colony to disallow any such rule who if he thinks fit shall disallow the same accordingly and if after having been so laid before the said Legislative Council or Legislative Assembly for such time no address be presented such rule shall be published in the *Gazette* of the said colony.

Admission of barristers solicitors &c.
27 Vic. No. 14 s. 35.
3 Pring 318.

Rules to be laid before Parliament.

Costs.

55. The judge or judges or a majority of them for the time being of the said Supreme Court of which majority the Chief Justice shall be one shall have power and are hereby required to make such general rules as he or they shall think fit for regulating and diminishing the fees to be allowed attorneys practising in the said court either in its common law equitable ecclesiastical matrimonial or insolvency jurisdiction and also to make rules and regulations for the taxation of attorneys' bills of costs in any of its jurisdictions and as between party and party or as between attorney and client specifying the several items to be allowed and the amount that is to be allowed on taxation for such item and from time to time to make and establish all such general rules and orders as to them shall seem meet for fixing the amount of fees and costs to be allowed in respect of all matters at any time pending in the said court as well to the officers and ministers thereof and to the officers and ministers of the several circuit courts as to the several practitioners therein respectively and as to the costs of appealing from a sole judge to the court and the giving security for the same and all or any of such rules and orders from time to time by any other such rules or orders for that purpose to repeal revoke vary or alter as circumstances shall appear to the said judges to require. Provided always that the rules and regulations so made altered or varied shall not take effect until one month after the publication thereof in the *Gazette*.

Judges to make rules &c.
25 Vic. No. 13 s. 68.
2 Pring 1608.
27 Vic. No. 14 s. 20.
3 Pring 316.

Costs.

15 Vic. No. 17 s. 1.
2 Pring 1592.

56. All fees poundage perquisites or costs of whatever nature received or receivable by any such officer of the said courts the fees properly

Fees of officers of court to be paid to Her Majesty.

31 VICTORIA No. 23.
 15 Vic. No. 17 s. 2.
 2 Pring 1592.

properly due to and receivable by such attorneys solicitors and practitioners excepted under and by virtue of any such rule and order of the said judges shall be paid to Her Majesty Her Heirs and Successors for the public uses of the said colony and in support of the government thereof and shall be applied in such manner as may be from time to time directed by any Act and in no other manner.

Commissioners of
 Supreme Court may
 receive fees.
 17 Vic. No. 12 s. 1.
 2 Pring 1593.

57. The enactment of the section last preceding shall not be deemed to extend or to have extended to any commissioner of the Supreme Court for taking affidavits or recognizances or to any commissioner for taking acknowledgments under the Act for the registry of deeds except in respect of fees received by any salaried officer or clerk of the Supreme Court for anything done by him as such commissioner during the ordinary office hours.

Power to award costs.

58. The Supreme Court shall have power to award costs 'in all cases lawfully brought before it and not provided for otherwise than by this section.

Effect of Decrees Rules and Orders.

Decrees rules and
 orders to have effect
 of judgments.
 25 Vic. No. 13 s. 62.
 2 Pring 1606.

59. All decrees and orders of the Supreme Court in equity and all rules and orders of the said court at common law or in its ecclesiastical or matrimonial jurisdiction whereby any sum of money or any costs charges or expenses shall be payable to any person shall have the effect of judgment at law and such person shall or lawfully may have execution thereon for the moneys so payable and the judges of the said court may from time to time cause writs of execution to be framed accordingly and to issue as they shall think fit and all such writs shall be enforced in the same manner as writs of execution are in ordinary cases.

Change of Venue.

Change of venue.
 25 Vic. No. 13 s. 64.
 2 Pring 1606.

60. It shall be lawful for the said court at any stage of any proceedings civil or criminal depending therein or in any circuit court whether the venue be by law local or not to order that the venue be changed and to direct that the trial thereof be had in Brisbane or in some particular circuit district of the said colony in such cases and for such reasons as the justice of the case may require and subject to such conditions as the court may in its discretion impose.

Questions of Fact.

Power of court to
 direct trial of feigned
 issues.
 25 Vic. No. 13 s. 47.
 2 Pring 1604.

61. It shall be lawful for the court or a judge in every case in which the ends of justice shall appear to them or him to render that mode of inquiry expedient whether at common law or in its equitable insolvency matrimonial ecclesiastical or other jurisdiction to direct the trial by a jury of any feigned issue or issues and for that purpose from time to time to make all such orders and issue all such writs and cause all such proceedings to be had and taken from time to time as the said court shall think necessary and upon the finding of such jury (unless a new trial shall for any sufficient reason in that behalf be ordered) to give such decision and make such decree or pronounce such judgment in the cause or matter pending before them as justice shall seem to such court to require.

Feigned issues and
 new trials.
 25 Vic. No. 14 s. 48.
 2 Pring 1604.

62. In all cases where the Supreme Court or any judge thereof now is or hereafter shall be authorised to direct the trial of any feigned issue or the said court shall in any action grant a new trial it shall
 be

be lawful for the said court or judge to impose such conditions on the parties respectively and to direct such admissions to be made by them or either of them for the purpose of any such trial or new trial and (in every case of new trial) to grant the same either generally or on some particular point or points only as to such court or judge respectively shall seem meet and (upon any such new trial as aforesaid) if the said court or judge shall think meet to order that the testimony of any witnesses examined at the former trial may be read from the judge's notes instead of any such witnesses being again examined in open court and upon any such feigned issue as aforesaid to permit both or any or either of the parties to examine on oath the other of them and for the several purposes aforesaid to make all such orders from time to time as may be necessary.

Powers of the Court.

63. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for the doing of anything by this Act prescribed or authorised to be done as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223.
27 Vic. No. 14 s. 0.
3 Pring 316.

Commencement and Short Title.

64. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Supreme Court Act of 1867.*"

Commencement of Act.
Short title.

SCHEDULE.

To A. B. Esquire sheriff [or to C. D. keeper of H.M. gaol] at _____ in the Colony of Queensland.

Whereas E. F. is detained in your custody under the warrant of I. J. Esquire J.P. upon a charge of _____ and whereas I decline to file any information against the said E. F. for the said offence Now therefore in pursuance of the *Supreme Court Act of 1867* I authorise you forthwith to discharge the said E. F. from your custody upon the said warrant.

27 Vic. No. 14.
3 Pring 318.
Section 28.

Given under my hand this _____ day of _____ A.D. _____
A. B. Attorney-General.



31 VICTORIAE No. 1. **An Act to Consolidate and Amend the Laws relating to Mesne Process and Process of Execution and to the Remedies of Plaintiffs in Actions at Common Law.**

[26th November, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to mesne process and process of execution and to the remedies of plaintiffs at common law Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Writ of Summons.

Personal actions when defendant resides within the jurisdiction to be commenced by writ of summons in form No. 1 of the schedule.

17 Vic. No. 21 s. 2.
2 Pring 1611.
15 & 16 Vic. c. 76 s. 2.

1. All personal actions brought in the Supreme Court where the defendant is residing or supposed to reside within the jurisdiction of the said court shall be commenced by writ of summons in the form contained in the schedule to this Act annexed marked number one and in every such writ and copy thereof the place of the residence or supposed residence of the party defendant or wherein the defendant shall be or shall be supposed to be shall be mentioned and such writ shall be issued by the prothonotary or such other officer as the court shall direct.

No form or cause of action to be mentioned in writ.

17 Vic. No. 21 s. 3.
2 Pring 1611.

15 & 16 Vic. c. 76 s. 3.

Writ to state names of all defendants and for only one action.

17 Vic. No. 21 s. 4.
2 Pring 1612.

15 & 16 Vic. c. 76 s. 4.

Writ to be dated on day of issuing and tested in name of Chief Justice or

senior judge.

17 Vic. No. 21 s. 5.
2 Pring 1612.

15 & 16 Vic. c. 76 s. 5.

Writ to be indorsed with name and abode of attorney or a memorandum that

writ has been sued by plaintiff in person.

17 Vic. No. 21 s. 6.
2 Pring 1612.

15 & 16 Vic. c. 76 s. 6.

2. It shall not be necessary to mention any form or cause of action in any writ of summons or in any notice of writ of summons issued under the authority of this Act.

3. Every writ of summons shall contain the names of all the defendants and shall not contain the name or names of any defendant or defendants in more actions than one.

4. Every writ of summons shall bear date on the day on which the same shall be issued and shall be tested in the name of the Chief Justice or in case of a vacancy of such office then in the name of a senior puisne judge of the court.

Indorsement.

5. Every writ of summons shall be indorsed with the name and place of abode of the attorney actually suing out the same and when the attorney actually suing out any writ shall sue out the same as agent for an attorney in the country the name and place of abode of such attorney in the country shall also be indorsed upon the said writ and in case no attorney shall be employed to issue the writ then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff in person mentioning the city town or parish and also the name of the hamlet street and number of the house of such plaintiff's residence if any such there be.

Indorsement of debt and costs on writ and copy of writ for a debt with notice that pro-

6. Upon the writ and copy of any writ served for the payment of any debt the amount of the debt shall be stated and the amount of what the plaintiff's attorney claims for the costs of such writ copy and

and service and attendance to receive debt and costs and it shall be further stated that upon payment thereof within _____ days to the plaintiff or his attorney further proceedings will be stayed which indorsement shall be written or printed in the following form or to the like effect—

“The plaintiff claims £ _____ for debt and £ _____ for costs and
 “if the amount thereof be paid to the plaintiff or to his attorney within _____ days from the service hereof further proceedings will be
 “stayed”—

But the defendant shall be at liberty notwithstanding such payment to have the costs taxed and if more than one-sixth shall be disallowed the plaintiff's attorney shall pay the costs of taxation.

Disclosure of Plaintiff.

7. Every attorney whose name shall be indorsed on any writ issued by authority of this Act shall on demand in writing made by or on behalf of any defendant declare forthwith whether such writ has been issued by him or with his authority or privity and if he shall answer in the affirmative then he shall also in case the court or a judge shall so order and direct declare in writing within a time to be allowed by such court or judge the profession occupation or quality and place of abode of the plaintiff on pain of being guilty of a contempt of the court from which such writ shall appear to have been issued and if such attorney shall declare that the writ was not issued by him or with his authority or privity all proceedings upon the same shall be stayed and no further proceedings shall be taken thereupon without leave of the court or a judge.

Concurrent Writs.

8. The plaintiff in any such action may at any time during six months from the issuing of the original writ of summons issue one or more concurrent writ or writs each concurrent writ to bear teste of the same day as the original writ and to be marked by the prothonotary with the word “concurrent” and the date of issuing the concurrent writ. Provided that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

9. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction and a writ for service out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

Renewal.

10. No original writ of summons shall be in force for more than six months from the day of the date thereof including the day of such date but if any defendant therein named shall not have been served therewith the original or concurrent writ of summons may be renewed at any time before its expiration for six months from the date of such renewal and so from time to time during the currency of the renewed writ by being marked by the proper officer with the date of such renewal upon delivery to him by the plaintiff or his attorney of a præcipe in such form as has aforetime been required to be delivered upon the obtaining of an alias writ and a writ of summons so renewed shall

31 VICTORIA No. 4.
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 ceedings will be stayed
 on payment within
 days.
 17 Vic. No. 21 s. 8.
 2 Pring 1612.
 15 & 16 Vic. c. 76 s. 8.

Attorney on demand
 to declare whether
 writ issued by his
 authority and to de-
 clare name and abode
 of his client if or-
 dered.
 17 Vic. No. 21 s. 7.
 2 Pring 1612.
 15 & 16 Vic. c. 76
 s. 7.

If writ issued without
 authority of attorney
 proceedings to be
 stayed.

Concurrent writs may
 be issued.
 17 Vic. No. 21 s. 9.
 2 Pring 1612.
 15 & 16 Vic. c. 76
 s. 9.

Writs for service
 within and without
 jurisdiction may be
 concurrent and *vice*
versa.
 17 Vic. No. 21 s. 20.
 2 Pring 1614.
 15 & 16 Vic. c. 76
 s. 22.

Renewal of writs of
 summons to save the
 statute of limitation
 and for other pur-
 poses.
 17 Vic. No. 21 s. 10.
 2 Pring 1612.
 15 & 16 Vic. c. 76
 s. 11.

31 VICTORIÆ No. 4. shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited and for all other purposes from the date of the issuing of the original writ of summons.

Production of renewed writ evidence of commencement of action.

17 Vic. No. 21 s. 12.

2 Pring 1613.

15 & 16 Vic. c. 76 s. 13.

17 Vic. No. 21 s. 28.

2 Pring 1613.

Renewal of writs issued before this Act.

17 Vic. No. 21 s. 11.

2 Pring 1613.

11. The production of a writ of summons purporting to be marked as aforesaid by the proper officer showing the same to have been renewed according to this Act shall be sufficient evidence of its having been so renewed and of the commencement of the action as of the first date of such renewed writ for all purposes.

12. Where any writ of summons in any such action shall have been issued before and shall be in force at the commencement of this Act such writ may at any time before the expiration thereof be renewed under the provisions of and in the manner directed by this Act and where any writ issued in continuation of a preceding writ shall be in force and unexpired or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act such continuing writ may be filed in the office of the court within one month next after the expiration of such writ or within twenty days after the commencement of this Act and the original writ of summons in such action may thereupon but within the same period of one month next after the expiration of the continuing writ or within twenty days after the commencement of this Act be renewed under the provisions of and in the manner directed by this Act and every such writ shall after such renewal have the same duration and effect for all purposes and shall if necessary be subsequently renewed in the same manner as if it had originally issued under the authority of this Act.

Service of Writ.

Proceedings where personal service cannot be effected.

17 Vic. No. 21 s. 15.

2 Pring 1613.

15 & 16 Vic. c. 76 s. 17.

13. The service of the writ of summons wherever it may be practicable shall be personal but where reasonable efforts have been made without success to effect personal service a true copy of the writ may be left at the defendant's then usual place of abode with some competent person there then residing to be named or otherwise sufficiently described in the affidavit of service hereinafter mentioned.

As to service of writ on corporation.

17 Vic. No. 21 s. 14.

2 Pring 1613.

15 & 16 Vic. c. 76 s. 16.

14. Every such writ of summons issued against a corporation aggregate may be served on the mayor or other head officer or on the town clerk treasurer clerk or secretary of such corporation and every such writ issued against the inhabitants of any place may be served on some peace officer thereof.

Indorsement of service to be made.

17 Vic. No. 21 s. 13.

2 Pring 1613.

15 & 16 Vic. c. 76 s. 15.

15. The person serving the writ of summons shall within three days after such service indorse on the writ the day of the month and week of the service thereof otherwise the plaintiff shall not be at liberty in case of non-appearance to proceed under this Act and every affidavit of service of such writ shall mention the day on which such indorsement was made.

Special Indorsement.

Special indorsement of the particulars of debts or liquidated demands may be made on the writ.

16. In all cases where the defendant resides within the jurisdiction of the court and the claim is for a debt or liquidated demand in money with or without interest arising upon a contract express or implied as for instance on a bill of exchange promissory note or cheque

or

or other simple contract debt or on a bond or contract under seal for payment of a liquidated amount of money or on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt or on a guarantee whether under seal or not where the claim against the principal is in respect of such debt or liquidated demand bill cheque or note the plaintiff shall be at liberty to make upon the writ of summons and copy thereof a special indorsement of the particulars of his claim in the form contained in the said schedule number four or to the like effect and when a writ of summons has been indorsed in the special form hereinbefore mentioned the indorsement shall be considered as particulars of demand and no further or other particulars of demand need be delivered unless ordered by the court or a judge.

31 VICTORIA No. 4.
17 Vic. No. 21 s. 22.
2 Pring 1615.
15 & 16 Vic. c. 76
s. 25.

Special indorsment
to stand for partic-
ulars of demand.

17. In case of non-appearance by the defendant where the writ of summons is indorsed in the special form hereinbefore provided it shall be lawful for the plaintiff on filing an affidavit of due service of the writ of summons in accordance with the provisions of this Act and a copy of such writ at once to sign final judgment in the form contained in the schedule number five for any sum not exceeding the sum indorsed on the writ together with interest at the rate specified if any to the date of the judgment and a sum for costs (to be fixed by the judges of the said Supreme Court) unless the plaintiff claim more than such fixed sum in which case the costs shall be taxed in the ordinary way and the plaintiff may upon such judgment issue execution at the expiration of eight days from the last day for appearance and not before. Provided always that it shall be lawful for the court or a judge either before or after final judgment to let in the defendant to defend upon an application supported by satisfactory affidavits accounting for the non-appearance and disclosing a defence upon the merits.

Final judgment upon
writ specially in-
dorsed in default of
appearance.
17 Vic. No. 21 s. 23.
2 Pring 1615.
15 & 16 Vic. c. 76
s. 27.

18. In case of such non-appearance where the writ of summons is not indorsed in the special form hereinbefore provided it shall and may be lawful for the plaintiff on filing an affidavit of due service of the writ of summons in accordance with the provisions of this Act and a copy of the writ of summons to file a declaration indorsed with a notice to plead in eight days and to sign judgment by default at the expiration of the time to plead so indorsed as aforesaid and in the event of no plea being delivered where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the writ of summons hereinbefore provided and the amount claimed is indorsed on the writ of summons the judgment shall be final and execution may issue for an amount not exceeding the amount indorsed on the writ of summons with interest at the rate specified (if any) and the sum fixed by the judges for costs as hereinbefore mentioned unless the plaintiff claim more in which case the costs shall be taxed in the ordinary way. Provided always that in such case the plaintiff shall not be entitled to more costs than if he had made such special indorsement and signed judgment upon non-appearance.

Judgment for non-
appearance where the
writ is not indorsed
in the special form.
17 Vic. No. 21 s. 24.
2 Pring 1615.
15 & 16 Vic. c. 76 }
s. 28.

Appearance and pro-
ceedings in default of
appearance.

19. In any action brought against two or more defendants where the writ of summons is indorsed in the special form hereinbefore provided

Proceedings where
only some of the de-
fendants appear to a

31 VICTORIE No. 4. provided if one or more of such defendants only shall appear and writ specially in- another or others of them shall not appear it shall and may be lawful dorsed. for the plaintiff to sign judgment against such defendant or defendants 17 Vic. No. 21 s. 29. only as shall not have appeared and before declaration against the 2 Pring 1616. other defendant or defendants to issue execution thereupon in which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared or the plaintiff may before issuing such execution declare against such defendant or defendants as shall have appeared stating by way of suggestion the judgment obtained against the other defendant or defendants who shall not have appeared in which case the judgment so obtained against the defendant or defendants who shall not have appeared shall operate and take effect in like manner as a judgment by default obtained before the commencement of this Act against one or more of the several defendants in an action of debt before the commencement of this Act.

Defendants out of the Jurisdiction of the Court.

As to actions against British subjects residing out of the jurisdiction of the Supreme Court. 17 Vic. No. 21 s. 16. 2 Pring 1613. 15 & 16 Vic. c. 76 s. 18.

20. In case any defendant being a British subject is residing out of the jurisdiction of the said Supreme Court it shall be lawful for the plaintiff to issue a writ of summons in the form contained in the said schedule number two which writ shall bear the indorsement contained in the said form purporting that such writ is for service out of the jurisdiction of the said Supreme Court and the time for appearance by the defendant to such writ shall be regulated by the distance from Brisbane of the place where the defendant is residing and it shall be lawful for the court or judge upon being satisfied by affidavit that there is a cause of action which arose within the jurisdiction or in respect of the breach of a contract made within the jurisdiction and that the writ was personally served upon the defendant or that reasonable efforts were made to effect personal service thereof upon the defendant and that it came to his knowledge and either that the defendant wilfully neglects to appear to such writ or that he is living out of the jurisdiction of the said court in order to defeat and delay his creditors to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such court or judge may seem fit having regard to the time allowed for the defendant to appear being reasonable and to the other circumstances of the case Provided always that the plaintiff shall and he is hereby required to prove the amount of the debt or damages claimed by him in such action either before a jury upon a writ of inquiry or before the registrar of the said Supreme Court in the manner hereinafter provided according to the nature of the case as such court or judge may direct and the making such proof shall be a condition precedent to his obtaining judgment.

As to actions against foreigners residing out of the jurisdiction of the Supreme Court. 17 Vic. No. 21 s. 17. 2 Pring 1614. 15 & 16 Vic. c. 76 s. 19.

21. In any action against a person residing out of the jurisdiction of the said court and not being a British subject the like proceedings may be taken as against a British subject resident out of the jurisdiction save that in lieu of the form of writ of summons in schedule number two the plaintiff shall issue a writ of summons according to the form contained in the said schedule number three and shall in manner aforesaid serve a notice of such last-mentioned writ

writ upon the defendant therein mentioned which notice shall be in the form contained in the said schedule also marked number three and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad and by leave of the court or a judge upon their or his being satisfied by affidavit as aforesaid the like proceedings may be had and taken thereupon.

31 VICTORIA No. 1.

Effect of Writ.

22. All such proceedings as are mentioned in any writ or notice issued under this Act shall and may be had and taken in default of a defendant's appearance.

Proceedings mentioned in writ or notice may be had and taken.
17 Vic. No. 21 s. 29.
2 Pring 1616.

Sunday.

23. Any writ of *capias ad respondendum* or of *capias ad satisfaciendum* issued or to be issued out of the Supreme Court shall and may respectively be lawfully executed upon a Sunday in like manner in all respects as the same respectively may now be executed upon any other day any law statute or usage to the contrary in anywise notwithstanding.

Writs when executed on Sunday.
13 Vic. No. 12.
1 Pring 40.

Affidavits sworn before a Consul.

24. Any affidavit for the purpose of enabling the court or a judge to direct proceedings to be taken against a defendant residing out of the jurisdiction of the said court may be sworn before any consul-general consul vice-consul or consular agent for the time being appointed by Her Majesty at any foreign port or place and every affidavit so sworn by virtue of this Act may be used and shall be admitted in evidence saving all just exceptions provided it be signed by such consul-general consul vice-consul or consular agent and it shall be taken to be so signed if it purport to be so signed without proof of the official character and signature of the person appearing to have signed the same. Provided always that if any person shall forge the signature of any such affidavit or shall use or tender in evidence any such affidavit with a false or counterfeit signature thereto knowing the same to be false or counterfeit he shall be guilty of felony and shall upon conviction be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years or to be imprisoned for any term not exceeding three years nor less than one year with hard labor and every person who shall be charged with committing any felony under this Act may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in the place in which he shall be apprehended or be in custody and every accessory before or after the fact to any such offence may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in any place in which the principal offender may be tried. Provided also that if any person shall wilfully and corruptly make a false affidavit before such consul-general consul vice-consul or consular agent every person so offending shall be deemed guilty of perjury in like manner as if such false affidavit had been made in Queensland before competent authority and shall and may be dealt with indicted tried and if convicted sentenced and his offence may be laid

Affidavits in certain cases may be sworn before a consul.
17 Vic. No. 21 s. 21.
2 Pring 1611.
15 & 16 Vic. c. 76 s. 23.

31 VICTORIA No. 4. laid and charged to have been committed in any place in which he shall be apprehended or be in custody as if his offence had been actually committed in that place.

Amendment.

Omission to insert or indorse matters in or on writ not to nullify it.
17 Vic. No. 21 s. 18.
2 Pring 1614.
15 & 16 Vic. c. 76 s. 20.

25. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof any of the matters required by this Act to be inserted therein or indorsed thereon such writ or copy thereof shall not on that account be held void but it may be set aside as irregular or amended upon application to be made to the court or to a judge and such amendment may be made upon any application to set aside the writ upon such terms as to the court or judge may seem fit.

Substitution by mistake or inadvertence of one form of writ for another may be amended by judge with or without costs.
17 Vic. No. 21 s. 19.
2 Pring 1614.
15 & 16 Vic. c. 76 s. 21.

26. If either of the forms of writ of summons contained in the said schedule marked respectively numbers one two and three shall by mistake or inadvertence be substituted for any other of them such mistake or inadvertence shall not be an objection to the writ or any other proceeding in such action but the writ may upon an *ex parte* application to a judge whether before or after any application to set aside such writ or any proceeding thereon and whether the same or notice thereof shall have been served or not be amended by such judge with or without costs.

Who to be deemed Absent Defendants.

If defendant shall be absent at the commencement of foreign attachment proceedings to be sufficient.
18 Vic. No. 6 s. 3.
1 Pring 9.

27. The provisions of the eighteen sections next succeeding shall apply to any defendant who shall be absent from the colony at the time of proceeding thereunder notwithstanding that he may have been within the colony at the time of issuing the writ of summons against him. Provided that it shall appear by affidavit that reasonable efforts were made and with due diligence to serve such summons on him but without effect. Provided that at any time during such proceedings a judge may require proof to his satisfaction that the plaintiff has no sufficient remedy under the remaining sections of this Act and in default thereof may stay proceedings or make such order as to him may seem just.

The term "absence."
4 Vic. No. 6 s. 24.
1 Pring 8.

28. Absence from the said colony or its dependencies shall for the purposes of the seventeen sections next succeeding be taken to mean absence for the time being whether the party shall ever have been within the said colony or its dependencies or not.

Proceedings against Absent Defendants.

Absent defendant.
4 Vic. No. 6 s. 2.
1 Pring 2.
18 Vic. No. 6 s. 2.
1 Pring 9.

29. In every action at law which shall hereafter be commenced in the Supreme Court wherein it shall appear by an indorsement upon the writ of summons made by the officer or person and by an affidavit of such officer or person who shall be charged or entrusted with the service thereof upon any defendant in such action to the effect that he has made diligent search for such defendant and has been unable to find him if an affidavit shall be filed on behalf of the plaintiff (in addition to a full affidavit of the cause of action) that such cause of action arose within the said colony or its dependencies and that to the best of the deponent's belief such defendant does not reside within the said colony or its dependencies and is to the best of the deponent's belief possessed of or entitled to or otherwise beneficially interested in any lands moneys securities for money chattels or other property

Absent defendant.

property in the custody or under the control of any person or persons in the said colony or its dependencies (to be named in such affidavit) or that any such person or persons is or are indebted to such defendant the plaintiff may proceed against such defendant by process of foreign attachment in the manner hereinafter directed. Provided that by leave of a judge (where it shall appear that plaintiff may sustain injury by the delay) such affidavit may be filed before the return of such writ of summons.

30. At any time after the filing of such indorsement and affidavits as aforesaid a writ of foreign attachment may be issued at the plaintiff's instance as of course and every such writ shall be in such form as the Supreme Court shall prescribe and be returnable into the said court either in term or in vacation on some day not less than fourteen days nor more than sixty days next after the date thereof and shall be served upon the several garnishees or persons therein named in whose hands it is intended thereby to attach any such lands moneys chattels property or debts by delivering a copy thereof to each such garnishee personally or by leaving the same at his or her then or last usual place of abode. Provided always that final judgment shall in no case be signed in any such action until an entry shall have been made on the record of the issue of such writ of attachment with a suggestion of the fact that the cause or causes of action so arose as aforesaid and in case it shall at any time appear that the cause of action did not arise within the said colony or its dependencies the attachment shall be forthwith dissolved with costs to be paid by the plaintiff to such parties and in such manner as the court or any judge thereof shall direct.

Form of attachment and how served.
4 Vic. No. 6 s. 3.
1 Pring 2.

Proviso as to proof where cause of action accrued.

31. Within fourteen days next after any such writ of attachment shall have issued as aforesaid the plaintiff at whose suit the same shall have been issued or if absent some person on his behalf shall before the prothonotary registrar or some commissioner of the Supreme Court enter into a bond with two sufficient sureties to be approved of by such prothonotary registrar or commissioner acknowledging himself and themselves to be indebted to the defendant against whom such attachment shall have so issued in such sum as one of the judges shall think fit to order conditioned amongst other things to repay all such sums as the said plaintiff shall recover in the action in case the judgment therein shall be thereafter vacated reversed or altered together with all costs sustained by the defendant which said bond and condition shall be in such form as the said court shall prescribe and in case of any breach or alleged breach of such condition the defendant shall be at liberty to sue the parties to such bond thereon at any time and if such bond be not so entered into as aforesaid the attachment shall be *ipso facto* dissolved.

Plaintiff to enter into a bond to account &c.
4 Vic. No. 6 s. 10.
1 Pring 4.

32. At any time after such bond shall have been so entered into and after final judgment in favor of the plaintiff shall have been obtained it shall be lawful for him to cause a writ or writs of *feri facias* upon such judgment to be from time to time issued as in any ordinary case for the amount of the debt or damages and costs thereby recovered and to cause to be taken in execution under any such writ (as against any defendant whose property shall have been so attached

After judgment plaintiff may issue *feri facias*.
4 Vic. No. 6 s. 11.
1 Pring 4.

31 VICTORIA No. 4. as aforesaid) not only all or any part of the lands goods moneys and other property so attached and which shall then continue subject to such attachment as aforesaid in whose hands soever the same property shall then be (and whatever may be the nature of such property whether ordinarily liable to be taken in execution or not and although the same or part thereof may be of the nature of a chose in action) but also by leave of a judge any other real or personal property of the defendant which the said plaintiff shall then be able to find and to receive any such goods moneys or property in satisfaction or part satisfaction of such debt or damages and costs at an amount to be fixed by the sheriff or to cause all such property (except as next mentioned) to be sold under such writ or writs as in ordinary cases. Provided that with respect to any such debt or other chose in action as aforesaid no sale or other disposition thereof shall take place except by order of the court or one of the judges thereof and upon the application of the plaintiff it shall be lawful for the said court or any judge thereof at any time in a summary manner to authorise an action for the amount of any such debt to be brought in the name of the creditor being such defendant as aforesaid or to cause the debtor to be summoned to attend such court or judge to show cause why he should not forthwith pay the amount of such debt to such plaintiff and if no sufficient cause be shown to order such payment accordingly and to enforce such order together with all costs attending the same by an attachment for a contempt as in other cases. Provided that where such leave of a judge shall not have been obtained the writ of *fieri facias* shall be special and limited to the property so attached or to part thereof.

Compelling payment of debts due to defendant under attachment.

Proceeding in the Action.

After attachment returned plaintiff may proceed in the action.
4 Vic. No. 6. s. 8.
1 Pring 4.

33. At any time after the return day of any such writ of attachment it shall be lawful for the plaintiff to proceed in the action as if the defendant against whom the same shall have so issued resided in Brisbane in the colony aforesaid and had appeared to such action in person. Provided that such bond as is hereinafter in that behalf prescribed shall have been first duly entered into.

Advertisement.

Public notice to be given.
4 Vic. No. 6 s. 4.
1 Pring 2.

34. In addition to service of the writ of foreign attachment the plaintiff shall also cause a notice of the issue of such writ signed by him or his attorney to be published in the *Gazette* and not less than twice in one other Brisbane newspaper and if the defendant or any garnishee shall reside within any other electoral district than Brisbane then not less than twice also in some newspaper published within such district or nearest thereto if none be published within it and every such notice shall be in such form as the court shall direct and the last of such publications thereof shall be one week at the least before the day on which the writ of attachment shall be made returnable.

The Garnishees.

Property and debts bound from the time attachment served.
4 Vic. No. 6 s. 5.
1 Pring 2.

35. From the time of the service of such writ upon any such garnishee or person as aforesaid all and singular the lands and other hereditaments moneys and chattels bills bonds and other property of whatsoever nature in the custody or under the control of such garnishee

garnishee then belonging to the defendant against whom such writ 31 VICTORIA No. 4.
 issued or to or in which such defendant shall then be legally or
 equitably entitled or otherwise beneficially interested (and whether
 solely or jointly with any person or persons) and all debts of every
 kind then due by any such garnishee to such defendant although the
 same or part thereof may be payable only at a future day shall to the
 extent of such defendant's right title and interest therein respectively
 be attached in the hands of such garnishee and (subject to any *bona*
fide prior claims or liens thereon) be liable to the satisfaction of the
 particular demand or cause of action of which he or she shall by the
 said writ have had notice and if any such garnishee or person without
 the leave of the court or one of the judges shall at any time after such
 service and before the said attachment shall be dissolved sell or other-
 wise knowingly dispose of or part with any such property or pay over
 any such debt or any part thereof excepting only to or to the use of
 the plaintiff in such writ he or she shall upon the application in a
 summary way of such plaintiff to the court or any judge thereof and
 on proof of the facts pay such damages to the plaintiff as such court
 or judge shall in that behalf think fit to order.

36. Upon the return of every such writ of attachment as afore- Inquiry as to pro-
 said or as soon after as conveniently may be and upon such other perty in garnishee's
 day or days of adjournment if any as shall in that behalf be directed hand.
 the said court or one of the judges thereof shall proceed to inquire 4 Vic. No. 6 s. 6.
 and determine whether in fact the plaintiff's cause of action arose 1 Pring 3.
 within the said colony or its dependencies and if so then what lands
 moneys chattels and other property as aforesaid (sufficient or not
 more than sufficient to satisfy the plaintiff's cause of action together
 with his costs of suit) then are or were at the time of the service of
 the said writ in the custody or under the control of any such
 garnishee or person as aforesaid belonging to the defendant or to or
 in which he was at that time entitled or interested as aforesaid and
 what debts were then due to such defendant from any such garnishee
 or person and the particulars thereof and whether such lands moneys
 and other property and debts or any part or parts thereof are or can
 be made available for the purpose of making such satisfaction as
 aforesaid and to what amount respectively and for the purposes of
 such inquiry and determination it shall be lawful for the said court
 or judge in a summary way to permit the said plaintiff to examine
 (before the said court or a judge or before a commissioner of the
 said court) *viva voce* upon oath every such garnishee or person
 together with such witnesses (if any) as the said court or judge
 may think proper to be so examined and for that purpose to
 make such orders and issue such summonses to the several
 garnishees and to any witness or witnesses as may in that behalf
 be deemed expedient and any such garnishee or person as aforesaid Attendance of parties.
 or witness who shall refuse or neglect to attend according to the
 exigency of any such writ of attachment or to obey any such order
 or summons or shall refuse to be so examined shall be liable to be
 summarily proceeded against as in cases of contempt of court and
 to be punished accordingly Provided always that in any case where
 it shall under the circumstances appear to be reasonable or just so to
 do

31 VICTORIA No. 4. do it shall be lawful for the court or any judge to dispense with the attendance of any such garnishee upon his submitting to be examined upon oath before a commissioner of the court or upon such other terms as such court or judge shall impose and where any such garnishee shall attend in obedience to any such writ or summons it shall be lawful for the court or sitting judge to award him the reasonable expenses of such attendance to be paid by the plaintiff.

Disposal of goods &c.
by leave of court.
4 Vic. No. 6 s. 7.
1 Pring 3.

37. If any such garnishee or person in whose hands any such lands goods or property as aforesaid shall have been so attached shall be desirous of disposing of the same or any part thereof or of receiving or paying (as the case may be) the amount of any bill bond or debt or other chose in action or any part thereof pending such attachment and shall apply for that purpose to the court or to one of the judges it shall be lawful for the said court or judge (due notice having been given to the plaintiff of such intended application) to authorise such garnishee or person to sell or dispose of any such property or to receive or pay any such amount and the proceeds of such sale or disposal or the amount so received or paid (as the case may be) shall be thereafter held by such garnishee or person or be paid into court or invested or otherwise be detained or appropriated subject to such attachment as aforesaid or otherwise for the satisfaction of the plaintiff as such court or judge shall think fit to order.

Court to determine
what property is to
continue subject to
attachment.
4 Vic. No. 6 s. 9.
1 Pring 4.

38. So soon as upon any such examination or inquiry as aforesaid it shall be ascertained by the court or sitting judge what lands moneys or other such property and debts as aforesaid can (consistently with existing liens or prior claims thereon to be determined by the said court or judge) be made available for the purpose of making satisfaction to the plaintiff as aforesaid the said court or judge shall forthwith order the same (or such part or parts thereof respectively as such court or judge shall think proper in that behalf) to be thenceforward holden for that purpose and to continue subject to such attachment accordingly or to be sold or otherwise disposed of if such court or judge shall think fit and the proceeds or (in case of debts then payable) the amount of such debts to be paid into the hands of some officer of the court subject to such attachment as the said court or judge may order and with respect to all and singular the lands moneys and other property debts and other choses in action to which no such order as aforesaid shall be intended to apply or as to which no such order can be made it shall be lawful for the said court or any of the judges at any time to direct that the said attachment shall be dissolved. Provided always that where more than one writ of attachment shall have issued against the same garnishee or person or the same property shall have been attached at the suit of more than one plaintiff it shall be lawful for the said court or any judge to award and determine how much and what parts of the property so attached or to what amount in value thereof shall be retained or holden under each of such writs or be paid into court or disposed of (as the case may be) for the separate benefit of each plaintiff and as to writs lodged with the sheriff on the same day the plaintiffs therein shall be entitled to satisfaction *pari passu* but if any of such writs shall have been lodged with

Proviso as to any
second writ.

with the sheriff on different days the plaintiffs shall be entitled to satisfaction respectively according to the priority of each in such lodgment.

39. The property of any such absent defendant as aforesaid may under the provisions of this Act be attached and taken in the custody or power of the defendant's wife or of any co-defendant and no process of foreign attachment against any such absent defendant nor any lien intended to be thereby created upon the land moneys securities debts and chattels or other property of such defendant thereby attached shall be defeated by reason of such co-defendant or any other garnishee as aforesaid being or claiming to be jointly interested with such defendant therein either as partner or otherwise and in all cases it shall be sufficient for the purposes of this Act to attach property in the hands of the person or persons having the actual care custody or control thereof for the time being.

Property in possession of any co-defendant or wife.
4 Vic. No. 6 s. 14.
1 Pring 6.

40. Every writ of attachment upon which any order shall have been made as aforesaid where the same shall have been followed by execution levied may be pleaded in bar by any person or persons in whose hands any lands goods debts or effects as aforesaid shall be attached to any action brought by or on behalf of the defendant for the recovery of such property and if any such action shall be brought pending the attachment the same shall be stayed by order of the court or a judge until the attachment shall be dissolved or the proceedings thereupon be otherwise determined and in such plea it shall be necessary only to state shortly that such writ of attachment was issued and to set out the substance of the order finally made thereon and then to allege that the property sought to be recovered was taken under a writ of execution issued after such order.

Attachment and execution may be pleaded in bar.
4 Vic. No. 6 s. 22.
1 Pring 8.

Defendant's Rights.

41. If pending any such writ of foreign attachment as aforesaid or at any time before final judgment obtained in the action in which such writ issued the defendant against whom such attachment shall have issued or any person on his behalf shall before the registrar of the said court enter into a bond with two sufficient sureties to be approved of by such registrar acknowledging himself and themselves to be indebted to the plaintiff in such sum as a judge shall think fit to order conditioned to pay the said plaintiff the amount of such debt or damages and costs as he shall at any time thereafter recover in such action then it shall be lawful for such defendant or person entering into the said bond upon entering an appearance (or if such appearance shall previously have been entered by the plaintiff then upon filing a plea or pleas therein) to defend such action and upon giving notice thereof to the said plaintiff to apply to the said court by motion as of course that the said attachment may be dissolved and the same shall be dissolved accordingly and the action shall thereupon proceed to trial and judgment in the ordinary manner.

Provision for dissolving foreign attachment.
4 Vic. No. 6 s. 12.
1 Pring 5.

42. If after any final judgment obtained as aforesaid an affidavit shall be made by the defendant against whom such process of foreign attachment shall have issued as aforesaid that such defendant had at the time of the obtaining of the said judgment and still hath a substantial ground of defence (either wholly or in part) to the

Provision enabling absent defendant to come in and defend notwithstanding judgment against him.
4 Vic. No. 6 s. 13.
1 Pring 5.

31 VICTORIE No. 4. plaintiff's action on the merits and such affidavit (sworn as next hereinafter mentioned) shall at any time before the expiration of three years next after such judgment be filed in the said court then upon motion thereupon for that purpose made to the said court on behalf of the said defendant and after due notice thereof given to the said plaintiff (and security being entered into for the payment to him of all costs by him at any time thereby sustained) it shall be lawful for the said court to cause the merits so alleged as aforesaid to be inquired into and determined in such manner and form either by a feigned issue between the parties or otherwise and at such time and under terms and conditions for the purpose of securing the substantial ends of justice as to the said court shall seem meet and the said court after such inquiry and determination had shall thereupon give such judgment in the matter for the reversal of the judgment in the original action either in the whole or in part or shall or lawfully may from time to time make such order or orders in the premises between the parties as the justice of the case shall appear to require and every such judgment and order may at any time (if the party succeeding shall think fit) be suggested upon or added to the record of the original action in which such final judgment shall have been so obtained as aforesaid and every such affidavit if made within the said Colony of Queensland or its dependencies shall be sworn before one of the judges or some officer of the court or person authorised to take affidavits to be used in the said court or if made elsewhere shall be sworn before a judge or master of some court of law or equity or the chief magistrate of some city or corporate town certified under the hand and seal of such magistrate.

Co-partners.

Provision in case of
absent defendants
sued as co-partners.
4 Vic. No. 6 s. 15.
1 Pring 6.

43. Provided always that in all cases wherein two or more defendants shall be sued as co-partners and as to any of such defendants there shall be such indorsement and affidavits as in section twenty-nine mentioned but as to any other of such defendants there shall be a return of personal service or of *cepi corpus* then if at any time after any such return an affidavit shall be filed that to the best of the deponent's knowledge and belief the defendant served or arrested did in fact when the cause of action accrued carry on business in the said colony or its dependencies as a co-partner jointly with the defendant or defendants as to whom there shall have been such indorsement and affidavits and that such last-mentioned defendant or defendants is or are absent from the colony it shall be lawful for the plaintiff at his option to proceed against every such absent defendant (in case no appearance be entered for him) in the manner next hereinafter mentioned that is to say upon the filing of such affidavit or as soon after as conveniently may be the plaintiff shall cause a notice to every such defendant signed by himself or his attorney to be published in the *Gazette* and in not less than one other Brisbane newspaper in such form as the court shall for that purpose direct requiring every such defendant to appear and if on the day named in such notice (such day not being less than ten days next after the day of the publication of the same in the said *Gazette*) no appearance be entered for the defendant or defendants so being absent from the colony the
plaintiff

plaintiff may proceed as if he or they resided in the said colony and had appeared to the action in person. 31 VICTORIA No. 4.

44. The like appearance may be entered and proceedings had where two or more defendants shall be sued although not as co-partners (where there shall be such indorsements and affidavits) upon an affidavit by or on behalf of the plaintiff that the cause of action against all the defendants accrued within the said colony or its dependencies and that the defendant or defendants as to whom such indorsement and affidavits was made is or are absent from the colony. Provided that in addition to the publication of such notice as aforesaid the plaintiff shall give security by bond before any such appearance as aforesaid shall be entered by him to such amount and in such form as a judge shall order conditioned to repay all such sums as he shall recover in the action against any such absent defendant together with all costs sustained by such defendant in the premises in case the judgment therein against him shall afterwards be vacated reversed or altered and every such defendant shall have the like remedy and the same proceedings may be taken on his behalf for procuring the reversal of such judgment so far as the same affects such defendant as are hereinbefore provided with respect to defendants against whose property there shall have been issued as aforesaid any writ of foreign attachment. Similar provision where defendants not sued as co-partners. 4 Vic. No. 6 s. 16. 1 Pring 6.

45. Nothing in the eighteen sections last preceding contained shall extend to any action of trespass or other action in tort (trover or detinue excepted) but to actions on or arising out of contract only. Act to extend only to cases of contract. 4 Vic. No. 6 s. 23. 1 Pring 8.

Attachment of Goods.

46. If a plaintiff in any action shall by the affidavit of himself or some other person or persons show to the satisfaction of a judge of the Supreme Court that such plaintiff has a cause of action against the defendant or defendants to the amount of ten pounds or upwards or has sustained damage to that amount and that the defendant or defendants is or are about to remove or is or are making preparations to remove or has or have absconded out of the jurisdiction of the court or to remote parts within the colony by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same and that such action will be defeated thereby it shall be lawful for such judge of the Supreme Court by a special order upon such terms as to giving security or otherwise as he may deem fit to direct that the plaintiff have leave to issue a writ in the form contained in the said schedule number six which said writ shall be called a writ of attachment and seizure and thereupon the sheriff shall seize and attach the goods and chattels of the defendant or defendants and if the defendant or defendants whose goods and chattels shall have been so seized and attached or any one on his or their behalf shall give bail with two sufficient sureties in treble the amount of debt or damages sought to be recovered by the plaintiff the action shall proceed and the sheriff shall release the said goods from his possession but in default of such bail at the expiration of fourteen days from the return of the said writ of attachment the action shall or may be set down for trial before the registrar when the plaintiff shall prove his debt. Attachment upon goods of absconding debtor. 25 Vic. No. 13 s. 37. 2 Pring 1601.

31 VICTORIÆ No. 4. debt or damages *viva voce* to the satisfaction of the registrar and such proof shall be reduced to the form of a deposition and so signed by the deponents and also by the registrar and filed and thereupon judgment may be entered in the form contained in the schedule number seven and a special writ of *fiery facias* may issue thereon for the sale of the said goods and chattels with the memorandum also in the said schedule number six contained indorsed thereon. Provided that if the goods and chattels so seized shall be of such a nature as to render the immediate sale thereof expedient the judge or in his absence the said registrar upon proof thereof upon affidavit may order the same to be sold and the money to be deposited in court until such bail shall be given and if such bail shall not be given within the time aforesaid the proceeds of any such sale shall be paid to the sheriff in satisfaction of the debt or damages and costs in such writ of *fiery facias* upon the said judgment. Provided that nothing herein contained shall prevent the plaintiff from arresting the defendant on a *capias ad respondendum* under any law now or hereafter to be in force. Provided that the plaintiff unless it be otherwise ordered by a judge shall enter into such bond as is required by the thirty-first section of this Act *mutatis mutandis*.

Capias ad Respondendum.

Arrest on mesne process abolished except in certain cases.

3 Vic. No. 15 s. 1.

1 Pring 38.

1 & 2 Vic. c. 110 s. 1.

No person to be arrested or held to bail unless on proof to the satisfaction of a judge that he is about to remove out of the jurisdiction of the Supreme Court or to abscond to remote parts within the colony.

3 Vic. No. 15 s. 2.

1 Pring 38.

1 & 2 Vic. c. 110 s. 3.

47. No person shall be arrested upon mesne process in any civil action in any court within the said colony or the dependencies thereof except in the cases and in the manner hereinafter provided.

48. If a plaintiff in any action in which the defendant is now liable to arrest whether upon the order of a judge or without such order shall by the affidavit of himself or some other person or persons show to the satisfaction of a judge of the Supreme Court that such plaintiff has a cause of action against the defendant or defendants to the amount of twenty pounds or upwards or has sustained damage to that amount and that the defendant or any one or more of the defendants is about to remove or is making preparations to remove out of the jurisdiction of the Supreme Court or otherwise to abscond to remote parts within the said colony (by which is intended parts beyond the limits which now are or hereafter may be prescribed for location within the same) and that such action will be defeated unless he she or they be forthwith apprehended it shall be lawful for such judge by a special order to direct that such defendant or defendants so about to remove or abscond shall be held to bail for such sum as such judge shall think fit not exceeding the amount of the debt or damages and thereupon it shall be lawful for such plaintiff within the time which shall be expressed in such order but not afterwards to sue out one or more writ or writs of *capias* against any such defendant or defendants so directed to be held to bail which writ of *capias* shall be in the form to be prescribed as hereinafter mentioned by the judges of the Supreme Court.

Sheriff may proceed to arrest defendant.

3 Vic. No. 15 s. 3.

1 Pring 39.

1 & 2 Vic. c. 110 s. 1.

Defendant to remain in custody until he finds bail or makes deposit.

49. The sheriff or other officer to whom any such writ of *capias ad respondendum* shall be directed shall before the return of the said writ but not afterwards proceed to arrest the defendant thereupon and such defendant when so arrested shall remain in custody until he shall have given a bail bond to the sheriff or other officer or shall have made deposit of the sum indorsed on such writ of *capias* together with

with ten pounds costs and all subsequent proceedings as to putting in and perfecting special bail shall be subject to the said rules made or hereafter to be made by the judges of the said court for the practice of the court in such cases.

50. Any such special order may be made and the defendant arrested in pursuance thereof at any time after the commencement of such action and before final judgment shall have been obtained therein.

Discharge of Prisoner.

51. It shall be lawful for any person arrested upon any such writ of *capias ad respondendum* to apply at any time after such arrest to a judge of the Supreme Court for an order or rule on the plaintiff in such action to show cause why the person arrested should not be discharged out of custody and it shall be lawful for such judge to make absolute or discharge such order or rule and to direct the costs of the application to be paid by either party or to make such other order therein as to such judge shall seem fit. Provided that any such order made by a judge may be discharged or varied by the court on application made thereto by either party dissatisfied with such order.

Capias ad Satisfaciendum.

52. Except as hereinafter provided no person shall be arrested on any writ of *capias ad satisfaciendum* issuing out of the Supreme Court. Provided always that if any judge of the said Supreme Court shall be satisfied by affidavit that the defendant fraudulently conceals money goods or valuable securities from his judgment creditor or that the defendant is about to leave the colony without satisfying the judgment the said judge shall order such writ to issue and the defendant may be arrested on such writ anything hereinbefore contained notwithstanding. Provided also that nothing in this section contained shall extend to any writ of *capias ad satisfaciendum* issued in any action for breach of promise of marriage libel slander seduction criminal conversation with the plaintiff's wife or any malicious injury.

53. In any case in which a defendant shall have been arrested or have given bail upon a writ of *capias ad respondendum* a writ of *capias ad satisfaciendum* may be issued to fix the bail or charge the defendant in execution as of course.

54. It shall not be necessary in any case to sue out a writ of *habeas corpus ad satisfaciendum* to charge in execution a person already in the prison of the court but such person may be so charged in execution by a *capias ad satisfaciendum* in all cases where by law such last mentioned writ may now issue and the service of such last mentioned writ upon the keeper of the prison for the time being shall have the effect of a detainer.

Discharge of Prisoner.

55. A written order under the hand of the attorney in the cause by whom any writ of *capias ad satisfaciendum* shall have been issued shall justify the sheriff gaoler or person in whose custody the party may be under such writ in discharging such party unless the party for whom such attorney professes to act shall have given written notice to the contrary to such sheriff gaoler or person in whose custody

Order may be made at any stage of the proceedings before final judgment.

3 Vic. No. 15 s. 4.

1 Pring 39.

1 & 2 Vic. c. 110 s. 5.

Defendant may apply for his discharge forthwith.

3 Vic. No. 15 s. 5.

1 Pring 39.

1 & 2 Vic. c. 110 s. 6.

Judge may discharge defendant or not.

As to arrests on Supreme Court writs.

10 Vic. No. 7 s. 3.

1 Pring 40.

Proviso as to fraudulent concealments and as to departure from the colony.

Proviso as to malicious injuries.

Writs of *ca. sa.* to fix bail.

20 Vic. No. 31 s. 54.

2 Pring 1654.

Proceedings for charging in execution a person already in prison.

15 & 16 Vic. c. 76 s. 127.

Sheriff or gaoler may discharge prisoner by authority of the attorney in the cause.

17 Vic. No. 21 s. 100.

2 Pring 1626.

15 & 16 Vic. c. 76 s. 126.

31 VICTORIA No. 4. custody the opposite party may be but such discharge shall not be a satisfaction of the debt unless made by the authority of the creditor and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client.

Fieri Facias.

Sheriff empowered to seize moneys bank notes &c.

3 Vic. No. 18 s. 1.

1 Pring 262.

1 & 2 Vic. c. 110 s. 12.

And to pay money or bank notes to execution creditor.

And to sue for amount secured by bills of exchange and other securities.

Property of debtors liable to be sold in execution.

25 Vic. No. 13 s. 38.

2 Pring 1602.

56. By virtue of any writ of *feri facias* to be sued out of the Supreme Court after the commencement of this Act or any precept in pursuance thereof the sheriff or other officer having the execution thereof may and shall seize and take any money or bank note or notes of any banking society or company established in Queensland or elsewhere and any cheques bills of exchange promissory notes bonds specialties or other securities for money belonging to the person against whose effects such writ of *feri facias* shall be sued out and may and shall pay or deliver to the party suing out such execution any money or bank notes which shall be so seized or a sufficient part thereof and may and shall hold any such cheques bills of exchange promissory notes bonds specialties or other securities for money as a security or securities for the amount by such writ of *feri facias* directed to be levied or so much thereof as shall not have been otherwise levied and raised and may sue in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby if and when the time of payment thereof shall have arrived and the payment to such sheriff or other officer by the party liable on any such cheque bill of exchange promissory note bond specialty or other security with or without suit or the recovery and levying execution against the party so liable shall discharge him to the extent of such payment or of such recovery and levy in execution as the case may be from his liability on any such cheque bill of exchange promissory note bond specialty or other security and such sheriff and other officer may and shall pay over to the party suing out such writ the money so to be recovered or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied and if after satisfaction of the amount so to be levied together with sheriff's poundage and expenses any surplus shall remain in the hands of such sheriff or other officer the same shall be paid to the party against whom such writ shall be so issued Provided that no such sheriff or other officer shall be bound to sue any party liable upon any such cheque bill of exchange promissory note bond specialty or other security unless the party suing out such execution shall enter into a bond with two sufficient sureties for indemnifying him from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof the expense of such bond to be deducted out of any money to be recovered in such action and for the purposes of this section the words "*writ of feri facias*" shall include a warrant or precept in the nature of such writ sued out of any inferior court in the said colony.

57. It shall be lawful for the sheriff under any writ of execution issued out of the Supreme Court whereby he is directed to levy any sum of money and whereby he is directed in the behalf herein mentioned to execute the same as herein mentioned (that is to say) to seize and take and to cause to be sold all and singular the lands tenements

tenements goods chattels choses in action and other property within the said colony of or to which the person named in the said writ against whom any judgment decree or order has been recovered or pronounced is or may be seized possessed or entitled or which he can either at law or in equity assign or dispose of whether such person be resident or domiciled within or without the said colony Provided however that this Act shall not empower such sheriff to sell any mere claim or right of entry to which such person is or may be entitled.

58. In case of any sale by the said sheriff by himself or his deputy of the right title and interest of any person of or in any lands the said sheriff is hereby required to execute a proper deed of bargain and sale of the right title and interest of such person to the purchaser thereof.

Sheriff to execute deed of bargain and sale to purchaser.
25 Vic. No. 13 s. 40.
2 Pring 1603.

59. It shall not hereafter be necessary for any sheriff to make an actual seizure of land under any writ in order to authorise a sale thereof but instead of such seizure he shall cause notice of the writ and of the intended day and place of sale and the particulars of the property to be published in such manner as the judges of the Supreme Court shall from time to time direct and the publication of such notice shall be equivalent to an actual levy by him on the land indicated by such notice.

Sales of land by sheriff.
25 Vic. No. 13 s. 41.
2 Pring 1603.

60. Every deed of sale heretofore or hereafter executed by any sheriff of the land of a judgment debtor or of the right title and interest of such debtor to and in any land shall be *prima facie* evidence of the existence of a valid judgment and writ to support a levy by such sheriff on the land and of the fact of a levy having been duly made on such land if stated in the deed or of such notice as aforesaid having been duly published if that fact be so stated and no such deed shall be deemed invalid by reason only of non-registration within one calendar month.

Deeds of sale by sheriff.
25 Vic. No. 13 s. 42.
2 Pring 1603.

61. It shall be lawful for the sheriff to whom any writ of *fiere facias* issued out of the Supreme Court shall be directed to take in execution and cause to be put up for sale and to be sold under such writ any equity of redemption or other equitable interest of or belonging to the defendant therein named and every such sale (the same being by public auction only and in cases of equity of redemption being previously advertised in the *Gazette* and in one or more newspaper or newspapers at least one calendar month before the same shall take place) shall be as valid and effectual to pass all such defendant's right and title to and interest in such equity or equitable interest as if the same had been conveyed or assigned to the purchaser by such defendant himself Provided that where any such equity or equitable interest shall relate to real estate a deed of bargain and sale thereof or of such defendant's right and title to and interest therein shall be executed by such sheriff to such purchaser and be by him duly registered within one calendar month next after sale.

Sheriff may sell equities of redemption.
25 Vic. No. 13 s. 43.
2 Pring 1603.

Renewal of Writ.

62. A writ of execution if unexecuted shall not remain in force for more than one year from the teste of such writ unless renewed in the manner hereinafter provided but such writ may at any time before its expiration be renewed by the party issuing it for one year from the

Writs of execution to remain in force for one year and to be renewed if necessary.
17 Vic. No. 21 s. 98.
2 Pring 1625.

date

Production of re-
newed writ evidence
of renewal.
17 Vic. No. 21 s. 99.
2 Pring 1626.
15 & 16 Vic. c. 76 s.
125.

63. The production of a writ of execution or of the notice renewing the same purporting to be so marked or countersigned as aforesaid showing the same to have been renewed according to this Act shall be sufficient evidence of its having been so renewed.

Chief Justice to ap-
point commissioners
in certain towns.
28 Vic. No. 26 s. 1.
3 Pring 48.

64. It shall be lawful for the Chief Justice of the Supreme Court to appoint from time to time by commission under his hand and the seal of the said court some fit persons residing respectively at the towns of Maryborough Gladstone Rockhampton Bowen and Warwick or within two miles of the said places to be commissioners of the said court for the purposes of this Act which commissioners shall at the instance of any plaintiff have power to issue writs of summons and of *capias ad respondendum* in the said court against any defendant about to depart out of the colony from any of the said towns in cases where by law an arrest upon *mesne* process is now allowed in the said court and every such writ of *capias* shall (except where hereby otherwise provided) have the same force and effect as an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane.

No writ of *capias* to issue unless upon proof that defendant is about to leave the colony.
2S Vic. No. 26 s. 2.
3 Pring 48.

65. No writ of *capias* shall be issued under the section last preceding unless proof by affidavit shall, be first given to the commissioner issuing the same that the defendant is about to depart out of the colony from any of the said towns and of all such other facts and matters which are or may be necessary to be given and established to obtain an order from a judge of the said court for the issue of an ordinary writ of *capias ad respondendum* out of the said court at Brisbane nor unless the plaintiff shall first give a bond of two sufficient persons (of whom the plaintiff if in the opinion of the said commissioner he is of sufficient ability may be one) to the satisfaction of the said commissioner to the defendant in a sum of money to be fixed by said commissioner not being less than double the amount for which the defendant shall be liable to be arrested or held to bail under such writ conditioned to be void on payment to the defendant of all damages costs and charges which may be adjudged to him in any action by him against the plaintiff and the bailiff to whom such writ of *capias* shall be directed or either of them for or by reason of such writ having been issued or of his being arrested thereunder or of any wrong or damage sustained by him on account thereof or of any wrongful act or omission of such bailiff in or about the execution thereof or otherwise in relation thereto and of all costs charges and expenses which upon any application by the defendant to the said court or any judge thereof for any rule or order to set aside any such writ or to discharge the defendant from custody thereunder or to cancel any bail bond given thereunder or otherwise in relation or connection with such writ or anything done thereunder

thereunder may be adjudged or ordered to be paid to the defendant 31 VICTORIE No. 4.
 Provided that the amount for which such bail bond shall be given shall in no case exceed the sum of four hundred pounds and such commissioner shall forthwith transmit such bond to the prothonotary of the said court at Brisbane and such prothonotary shall upon demand deliver such bond to the defendant or any one applying for the same on his behalf.

66. It shall not be necessary for any order to be made to warrant the issuing of any writ of *capias* under the said last-mentioned section of this Act but the commissioner shall by memorandum thereon under his hand certify on whose application and on what affidavit or affidavits and when it was issued and the amount for which the defendant is to be arrested or held to bail thereunder in the form or to the effect following—

This writ was issued this day of one thousand eight hundred and sixty- under the provisions of the "*Common Law Process Act of 1867*" on the application of the therein-named A. B. [*naming the plaintiff*] and upon reading the affidavit of [*naming the deponent*] sworn on the day of one thousand eight hundred and sixty- [*describing each affidavit if more than one*] and the defendant [*naming the defendant*] is to be arrested or held to bail hereunder for or in the sum of pounds [*specifying the amount*]. E. F. [*here to be signed by the commissioner*] commissioner.

67. Every writ of *capias* issued under the said last-mentioned section of this Act shall instead of being directed to the sheriff be directed to some person to be specially named by the plaintiff as bailiff to execute the same and shall be issued under the signature and seal of the commissioner issuing the same. Writs of *capias* under the Act to be directed to special bailiff. 28 Vic. No. 26 s. 4. 3 Pring 49.

68. Every writ of summons issued under the said last-mentioned section of this Act shall be the commencement of an action in the said court by the plaintiff against the defendant and such commissioner upon issuing any such writ of summons or *capias* shall forthwith transmit copies thereof and of every indorsement thereon and the original affidavits upon which any such writ of *capias* was issued by him to the office of the prothonotary of the said Supreme Court at Brisbane to be there filed and kept. Copies of writs to be transmitted to Supreme Court in Brisbane. 28 Vic. No. 26 s. 5. 3 Pring 49.

69. Every such commissioner shall be entitled to receive and retain for his own use for issuing any writ of summons to ground the issuing of a writ of *capias* under the said last-mentioned section of this Act the sum of five shillings and for issuing any writ of *capias* the sum of one pound and to no other fees or remuneration whatsoever. Fees to commissioner. 28 Vic. No. 26 s. 6. 3 Pring 49.

70. The bailiff acting under any writ of *capias* issued under the said last-mentioned section of this Act shall have authority and shall be bound to take bail by bond of the defendant and two sureties to himself for the appearance and rendering of the body of the defendant according to the exigency of such writ and the practice of the said court of the same kind and in like manner in all respects as the sheriff is bound to take bail from a defendant arrested under an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane directed to himself and such bailiff upon such bail bond being entered into and given to him shall release the defendant from his custody under such writ and every such bail bond shall be assignable by such bailiff. Bail to be taken by bailiff. 28 Vic. No. 26 s. 7. 3 Pring 49.

31 VICTORIÆ No. 4. bailiff to the plaintiff and such bailiff upon being required so to do shall assign the same to the plaintiff and the plaintiff upon such assignment thereof may sue thereon in like manner in all respects as if it was an ordinary bail bond to the sheriff.

Deposit in lieu of
bail.
28 Vic. No. 26 s. 8.
3 Pring 49.

71. Every bailiff acting under any writ of *capias* issued under the said last-mentioned section of this Act shall be bound to receive from the defendant as a deposit in lieu of bail the amount for which he is to be arrested or held to bail thereunder and the sum of ten pounds for costs in like manner as the sheriff is bound to do under an ordinary writ of *capias ad respondendum* issued out of the said court at Brisbane directed to and executed by him and upon receipt of such deposit such bailiff shall release the defendant from his custody under such writ and shall forthwith pay or cause to be paid to the prothonotary of the said court at Brisbane the money so deposited by such defendant as aforesaid to be held and disposed of by such prothonotary according to law.

Fees to bailiff.
28 Vic. No. 26 s. 9.
3 Pring 49.

72. Every bailiff serving any writ of summons or executing any writ of *capias* under the said last-mentioned section of this Act shall be entitled to the same fees mileage and other remuneration for everything done by him as such bailiff under the provisions of the said section of this Act as the sheriff and his bailiff are or is or may be entitled to for the same or similar acts done by them or either of them in serving or executing or otherwise in relation to any ordinary writ of summons or of *capias ad respondendum* issued out of the said court at Brisbane or taking bail thereunder and to no other payment or remuneration whatever.

Commissioners may
issue writs of sum-
mons and subpoena
to give evidence.
28 Vic. No. 26 s. 10.
3 Pring 50.

73. It shall be lawful for any of the said commissioners residing at any of the towns aforesaid to receive any *præcipe* for and to issue any writ of summons for the said Supreme Court at Brisbane and also to issue any writ of subpoena to give evidence in any case civil or criminal Provided that every such writ of summons shall be returnable in the Supreme Court at Brisbane and that every such *præcipe* shall as soon as conveniently may be after the issue of the writ to which the same relates be transmitted by the commissioner who received the same to the office of the prothonotary of the Supreme Court.

Judges to make rules
and regulations.
28 Vic. No. 26 s. 11.
3 Pring 50.
27 Vic. No. 14 s. 20.
3 Pring 316.

74. The judges of the said court or such majority as hereinafter mentioned shall and may from time to time make all such rules and regulations as to fees and costs or otherwise as to the said judges shall seem proper to be paid to such commissioner for receiving any *præcipe* for and for issuing any writs of summons or *capias ad respondendum* or otherwise as they may think necessary or proper for carrying the ten sections last preceding of this Act into execution and shall and may repeal alter and amend the same when and as they shall think fit.

New Forms.

New forms of writs
and other proceed-
ings.
17 Vic. No. 21 s. 175.
2 Pring 1639.
15 & 16 Vic. c. 76
s. 224.
27 Vic. No. 14 s. 20.
3 Pring 316.

75. Such new or altered writs and forms of proceedings may be issued entered and taken as may by the judges of the said court or a majority of them of whom the Chief Justice shall be one be deemed necessary or expedient for giving effect to the provisions hereinbefore contained and in such forms as the judges of such court or such majority shall from time to time think fit to order and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said court are now acted upon
and

and enforced or as near thereto as the circumstances of the case will admit and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein except so far as the effect thereof may be varied by this Act.

Powers of the Court.

76. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges.
31 VICTORIA No. 4.
17 Vic. No. 21 s. 171.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223.
27 Vic. No. 14 s. 20.
3 Pring 316.

Commencement and Short Title.

77. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Common Law Process Act of 1867.*"

Commencement of Act.
Short title.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

NUMBER ONE.

Writ where the Defendant Resides within the Jurisdiction.

VICTORIA by the grace of God [*et cetera*]
To C. D. of

We command you that within _____ days after the service of this writ on you inclusive of the day of such service you do cause an appearance to be entered for you in our Supreme Court at Brisbane in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may proceed therein to judgment and execution and further take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

Schedule of 17 Vic. No. 21. 2 Pring 1639.

Sections 1 23 and 26.

Witness the Honorable [*et cetera.*]

Memorandum to be Subscribed on the Writ.

N.B.—This writ is to be served within [*six*] calendar months from the date thereof or if renewed from the date of such renewal including the day of such date and not afterwards.

Indorsement to be Made on the Writ before Service thereof.

This writ was issued by E. F. of _____ attorney for the said plaintiff or this writ was issued in person by A. B. who resides at [*mention the city town or parish and also the name of the hamlet street and number of the house of the plaintiff's residence if any such.*]

Section 5.

Indorsement to be Made on the Writ after Service thereof.

This writ was served by X. Y. on I. M. [*the defendant or one of the defendants*] on [*Monday*] the _____ day of _____ 18____ and I make this indorsement on [*Tuesday*] the _____ day of _____ 18____.

Section 15.

(Signed) X. Y.

31 VICTORIA No. 4.

NUMBER TWO.

*Writ where the Defendant being a British Subject Resides out of the Jurisdiction.*VICTORIA by the grace of God [*et cætera*]

To C. D. of

Schedule of 17 Vic. No
21. Pring 1639.
Sections 20 and 26.

We command you that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from Queensland*] days after the service of this writ on you inclusive of the day of such service you do cause an appearance to be entered for you in our Supreme Court at Brisbane in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may by leave of the court or a judge proceed therein to judgment and execution and further take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

Witness *et cætera*.*Memorandum to be Subscribed on the Writ.*

N.B.—This writ is to be served within [*six*] calendar months from the date thereof or if renewed from the date of such renewal including the day of such date and not afterwards.

Indorsement to be Made on the Writ before the Service thereof.

This writ is for service out of the jurisdiction of the court and was issued by E. F. of attorney for the said plaintiff or this writ was issued in person by A. B. who resides at [*mention the city town or parish and also the name of the hamlet street and number of the house of the plaintiff's residence if any such.*]

[*The indorsement required by the sixth section should be made on this writ but should allow the defendant the time limited for appearance to pay the debt and costs.*]

NUMBER THREE.

*Writ where the Defendant not being a British Subject Resides out of the Jurisdiction.*VICTORIA by the grace of God [*et cætera*]

To C. D. late of

Schedule of 17 Vic. No
21. 2 Pring 1640.
Sections 21 26.

We require you that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from Queensland*] days after notice of this writ is served on you inclusive of the day of such service you do cause an appearance to be entered for you in our Supreme Court at Brisbane in an action at the suit of A. B. and take notice that in default of your so doing the said A. B. may by leave of the court or a judge proceed therein to judgment and execution and further take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

Witness [*et cætera*.]*Memorandum to be Subscribed on the Writ.*

N.B.—Notice of this writ is to be served within [*six*] calendar months from the date thereof including the day of such date and not afterwards.

*[Indorsements as in other cases.]**Notice of the Foregoing Writ.*

To G. H. late of [*Ipswich in the colony of Queensland*] [*or*] now residing at [*Auckland in New Zealand.*]

Section 21.

Take notice That A. B. of _____ in the Colony of Queensland has commenced an action at law against you C. D. in Her Majesty's Supreme Court of Queensland by a writ of that court dated the _____ day of _____ A.D. 18 _____ and you are required within

_____ days after the receipt of this notice inclusive of the day of such receipt to defend the said action by causing an appearance to be entered for you in the said court to the said action and in default of your so doing the said A. B. may by leave of the court or a judge proceed thereon to judgment and execution and further take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

[*Here state amount of claim as required by sixth section but allowing the defendant the time limited for appearance to pay debt and costs.*]

(Signed) A. B. of [*et cætera*]

or

E. F. of [*et cætera*]

Attorney for A. B.

NUMBER

NUMBER FOUR.

31 VICTORIAE NO. 4.

Special Indorsement.

[After the indorsement required by the Sixth Section of this Act this special indorsement may be inserted.]

The following are the particulars of plaintiff's claim—

					£	s.	d.
1849	June 20	Half year's rent to this day of house and premises in street Brisbane ...			25	10	0
	September 12	Ten sacks of flour at forty shillings ...			20	0	0
	December 1	Money received by defendant ...			17	0	0
		Paid			62	10	0
		Balance due			15	0	0
		Balance due			47	10	0

Or

To butchers' meat supplied between the first of January 1849 and the first of January 1850	52	0	0
Paid	20	0	0
Balance due	32	0	0

[If any account has been delivered it may be referred to with its date or the plaintiff may give such a description of his claim as in a particular of demand so as to prevent the necessity of an application for further particulars.]

Or

Fifty pounds principal and interest due on a bond dated the day of conditioned for the payment of one hundred pounds

Or

Ninety pounds principal and interest due on a covenant contained in a deed dated the day of to pay one hundred pounds and interest

Or

A penalty of one hundred pounds under the statute fifty-five George the Third chapter one hundred and thirty-seven

Or

Eighty-five pounds on a bill of exchange for one hundred pounds dated the second of February one thousand eight hundred and sixty-seven accepted or drawn or indorsed by the defendant

Or

Fifty pounds on a guarantee dated the first of January one thousand eight hundred and sixty-seven whereby the defendant guaranteed the due payment by E. F. of goods supplied or to be supplied to him.

[To any of the above may be added in cases where interest is payable "the plaintiff also claims interest on pounds of the above sum from the date of the writ until judgment."]

N.B.—Take notice that if a defendant served with this writ within the jurisdiction of the court do not appear according to the exigency thereof the plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed [with interest at the rate specified] and the sum of pounds for costs and issue execution at the expiration of eight days from the last day for appearance.

NUMBER FIVE.

In the Supreme Court of Queensland

On the day of A.D. 18 .

[Day of signing the judgment]

Queensland }
to wit.

A. B. in his own person [or by his attorney] sued out a writ of summons against C. D. indorsed according to the Common Law Procedure Act of 1867 as follows—

Schedule of 17 Vic. No. 21. 2 Pring 1841. Section 17.

[Here copy special indorsement.]

And the said C. D. has not appeared therefore it is considered that the said A. B. recover against the said C. D. pounds together with pounds for costs of suit.

NUMBER

31 VICTORIA No. 4.

NUMBER SIX.

Form of Writ of Attachment and Seizure of Goods.

Victoria by the grace of God of the United Kingdom of Great Britain and Ireland Queen
defender of the faith &c.

Schedule of 17 Vic. No.
21. 2 Pring 1641.
Section 46.

To the sheriff of the Colony of Queensland his deputies and bailiffs Greeting
Whereas A.B. hath given testimony that C.D. is indebted to him in the sum of
£ [or claims damages from C.D. to the amount of £] and that this
writ should issue in pursuance of the Act in that case made and provided These are therefore
to command you that you seize and attach the goods chattels and effects but not the lands
of the said C.D. within your bailiwick until he shall have given bail in the sum of
(£ treble the amount of debt or damages) and that you further do as we shall
hereafter command you in this behalf and that you return this writ immediately on the
execution thereof.

Witness the Honorable [name] Chief Justice of our Supreme Court at Brisbane
this day of A.D. 18 .

Memorandum to be indorsed on the Writ.

This writ extends only to the goods chattels and effects of the said C. D.

NUMBER SEVEN.

Entry of Judgment under Section Forty-six.

In the Supreme Court of Queensland

On the day of A.D. 18 .

On the day and year above written a writ to our Lady the Queen issued forth of
this court in these words that is to say—

Schedule of 17 Vic. No.
21. 2 Pring 1641.
Section 46.

Victoria by the grace of God &c. [here copy the writ] and the said C.D. has not
given bail and the plaintiff has proved to the satisfaction of the registrar as appears by
the depositions and certificate filed herein that the said C.D. is indebted to him [or that he
has sustained damages by C D.] to the amount of £ Therefore it is considered that he
said A.B. have execution for his said debt [or damages] and costs forthwith.

Let execution issue for £ the debt [or damages] and costs.

An Act to Consolidate and Amend the Laws 31 VICTORIA No. 17. relating to Practice at Common Law.

[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating Presmble.
to practice at common law Be it enacted by the Queen's
Most Excellent Majesty by and with the advice and consent of the
Legislative Council and Legislative Assembly of Queensland in Parliament
assembled and by the authority of the same as follows—

Interpretation.

1. For all the purposes of this Act the words "court" and
"judge" shall be construed to mean the Supreme Court or a judge thereof
and the word "prothonotary" shall be construed to apply to the registrar
or any master in equity or other proper officer of the Supreme Court and
vice versa unless in any of the cases aforesaid there be something in the
subject or context repugnant to such construction. Interpretation clause
11 Vic. No. 33 s. 15.
2 Pring 1588.

2. The following words and expressions are intended to have the
meanings hereby assigned to them respectively so far as such meanings are
not excluded by the context or by the nature of the subject matter that is
to say the word "parent" shall include father and mother and grand-
father and grandmother and stepfather and stepmother and the word
"child" shall include son and daughter and grandson and granddaughter
and stepson and stepdaughter. Construction of Act.
11 Vic. No. 32 s. 5
1 Pring 686.
9 & 10 Vic. c. 93
s. 5.

Abolition of certain Defences Writs and Actions.—Substituted Proceedings.

3. No wager of law shall be allowed.

4. No writ of right of dower or writ of dower and no plaint for free
bench or dower in the nature of any such writ or action and no *quare*
impedit and no action real or mixed except an ejectment shall be brought
after the commencement of this Act in any court whatsoever but when
any such writ action or plaint would lie now in the Supreme Court an
action may be commenced by writ of summons issuing out of the said
court in the same manner and form as the writ of summons in an ordinary
action and upon such writ shall be indorsed a notice that the plaintiff
intends to declare in dower or for free bench or in *quare impedit* as the
case may be. Wager of law
abolished.
25 Vic. No. 13 s. 57.
2 Pring 1605.
3 & 4 Wm. IV. c. 42
s. 13.
Dower and right of
dower *quare impedit*
and real and mixed
actions abolished as
real actions and to
begin by writ of
summons.
26 Vic. No. 7 s. 21.
2 Pring 1657.
23 & 24 Vic. c. 126
s. 26.

5. The service of the writ appearance of the defendant proceedings
in default of appearance pleadings judgment execution and all other
proceedings and costs upon such writs shall be subject to the same rules
and practice as nearly as may be as the proceedings in an ordinary action
commenced by writ of summons and according to the law and practice for
the time being in force with respect to such an action. Writ and all proceed-
ings thereupon to be
as in ordinary
actions.
26 Vic. No. 7 s. 22.
2 Pring 1657.
23 & 24 Vic. c. 126
s. 27.

Extension of Rights of Action.

6. It shall and may be lawful for any person or persons having
any rent in arrear or due upon any lease or demise for life or lives to bring
an action or actions of debt for such arrears of rent in the same manner as
they might have done in case such rent were due and reserved upon a
lease for years. Debt may be brought
against tenant for life
for rent.
8 Anne c. 14 s. 4.

31 VICTORIA No. 17.

Rents how to be recovered when the demises are not by deed.

11 Geo. II. c. 19 s. 14.

7. It shall and may be lawful for the landlord where the agreement is not by deed to recover a reasonable satisfaction for the lands tenements or hereditaments held or occupied by the defendant in an action on the case for the use and occupation of what was so held or enjoyed and if in evidence on the trial of such action any parol demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear the plaintiff in such action shall not therefore be nonsuited but may make use thereof as an evidence of the *quantum* of the damages to be recovered.

Actions against and by Executors.

Debt on simple contract.

25 Vic. No. 13 s. 57.
2 Prin 1605.

3 & 4 Wm. IV. c. 42 s. 14.

Rents recoverable from under-tenant when tenants for life die before the rent is payable.

11 Geo. II. c. 19 s. 15.

8. All actions of debt shall be maintainable on simple contract against executors and administrators.

9. Where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands tenements or hereditaments which determined on the death of such tenant for life the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands tenements or hereditaments if such tenant for life die on the day on which the same was made payable the whole or if before such day then a proportion of such rent according to the time such tenant for life lived of the last year or quarter of a year or other time in which the said rent was growing due as aforesaid making all just allowances or a proportionable part thereof respectively.

Rents reserved on leases determining on the death of the person making them (though not strictly tenant for life) or on the death of the tenant *per autre vie* to be considered as within the provisions of the section last preceding.

4 & 5 Wm. IV. c. 22 s. 1.

10. Rents reserved and made payable on any demise or lease of lands tenements or hereditaments which have been and shall be made and which leases or demises determined or shall determine on the death of the person making the same (although such person was not strictly tenant for life thereof) or on the death of the life or lives for which such person was entitled to such lands tenements or hereditaments shall so far as respects the rents reserved by such leases and the recovery of a proportion thereof by the person granting the same his or her executors or administrators (as the case may be) be considered as within the provisions of the section last preceding.

Actions by and against executors for injuries in testator's lifetime.

25 Vic. No. 13 s. 58.
2 Prin 1606.
3 & 4 Wm. IV. c. 42 s. 2.

11. Actions of trespass or on the case may be maintained by executors or administrators for any injury to the real estate of their testator or intestate committed in his lifetime for which the like actions might have been maintained by him. Provided that every such action shall be brought within one year after the death of such testator or intestate and that the injury shall have been committed within six calendar months before his death and the damages when recovered shall form part of the deceased's personal estate and the like actions may be maintained against the executors or administrators for any wrong committed by their testator or intestate to another in respect of his property real or personal. Provided that every such action shall be brought within six months after such executors or administrators shall have taken on themselves the administration of the estate of the deceased and that the injury shall have been committed within the like period preceding his death and the damages recovered in such action shall be payable in like order of administration as the deceased's simple contract debts.

Liability for death caused wrongfully.

11 Vic. No. 32 s. 1.

12. Whensoever the death of a person shall be caused by a wrongful act neglect or default and the act neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action

action and recover damages in respect thereof then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.

13. Every such action shall be for the benefit of the wife husband parent and child of the person whose death shall have been so caused and shall be brought by and in the name of the executor or administrator of the person deceased and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought and the amount so recovered after deducting the costs not recovered from the defendant shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

14. Provided that not more than one action shall lie for and in respect of the same subject matter of complaint and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

15. In every such action the plaintiff on the record shall be required together with the declaration to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought and of the nature of the claim in respect of which damages shall be sought to be recovered.

Specific Delivery of Chattels.

16. When the action shall have been brought to recover specific goods and the plaintiff shall have claimed a return of such goods or their value and damages for their detention and shall have recovered a verdict and judgment in such action it shall be lawful for the sheriff if so required by the plaintiff to demand and seize the specific goods claimed if they can be found by him and to deliver them to the plaintiff and if the sheriff shall not find and seize the said goods it shall be lawful for the court or a judge if the said court or judge shall see fit on the application of the plaintiff to order the actual return thereof and to enforce such order by process of attachment and if such application be refused or if such order be not obeyed the plaintiff may by leave of a judge procure a separate writ of *fieri facias* to be issued for the value of the goods without prejudice to his right to issue execution either before or after or concurrently therewith for his costs of suit and the damages awarded for the detention of the goods.

17. The court or a judge shall have power if they or he see fit to do so upon the application of the plaintiff in any action for the detention of any chattel to order that execution shall issue for the return of the chattel detained without giving the defendant the option of retaining such chattel upon paying the value assessed and if the said chattel cannot be found and unless the court or a judge shall otherwise order the sheriff shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick till the defendant render such chattel or at the option of the plaintiff that he cause to be made of the defendant's goods the assessed value of such chattel Provided that

31 VICTORIA. No. 17.
1 Pring 686.
9 & 10 Vic. c. 93 s. 1.

Actions how brought.
11 Vic. No. 32 s. 2.
1 Pring 686.
9 & 10 Vic. c. 93 s. 2.

Limitation of actions.
11 Vic. No. 32 s. 3.
1 Pring 686.
9 & 10 Vic. c. 93 s. 3.

Particulars of demand.
11 Vic. No. 32 s. 4.
9 & 10 Vic. c. 93 s. 4.

In action for recovery of specific goods sheriff after verdict may seize such goods.
17 Vic. No. 21 s. 97.
2 Pring 1625.

Further procedure if such goods cannot be found or delivery of them be refused.

Specific delivery of chattels.
27 Vic. No. 14 s. 31.
3 Pring 317.
17 & 18 Vic. c. 125 s. 73.

31 VICTORIE No. 17. that the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages costs and interest in such action Provided that the plaintiff may proceed under the preceding section anything herein contained notwithstanding.

Specific delivery of goods sold.
28 Vic. No. 6 s. 2.
3 Pring 226.
19 & 20 Vic. c. 97 s. 2.

18. In all actions and suits in the Supreme Court or any court of record not being a small debts court for breach of contract to deliver specific goods for a price in money on the application of the plaintiff and by leave of the judge before whom the cause is tried the jury shall if they find the plaintiff entitled to recover find by their verdict what are the goods in respect of the non-delivery of which the plaintiff is entitled to recover and which remain undelivered what (if any) is the sum the plaintiff would have been liable to pay for the delivery thereof what damages (if any) the plaintiff would have sustained if the goods should be delivered under execution as hereinafter mentioned and what damages if not so delivered and thereupon if judgment shall be given for the plaintiff the court or any judge thereof at their or his discretion on the application of the plaintiff shall have power to order execution to issue for the delivery on payment of such sum (if any) as shall have been found to be payable by the plaintiff as aforesaid of the said goods without giving the defendant the option of retaining the same upon paying the damages assessed and such writ of execution may be for the delivery of such goods and if such goods so ordered to be delivered or any part thereof cannot be found and unless the court or such judge as aforesaid or a judge of the Supreme Court shall otherwise order the sheriff or other officer of such court of record shall distrain the defendant by all his lands and chattels in the said sheriff's bailiwick or within the jurisdiction of such other court of record till the defendant deliver such goods or at the option of the plaintiff cause to be made of the defendant's goods the assessed value or damages or a due proportion thereof Provided that the plaintiff shall either by the same or a separate writ of execution be entitled to have made of the defendant's goods the damages costs and interest in such action or suit.

Execution on Decrees and Orders.

Decrees and orders of courts of equity &c. to have effect of judgments.
3 Vic. No. 18 s. 5.
1 Pring 264.
1 & 2 Vic. c. 110 s. 18.

19. All remedies hereby given to judgment creditors are likewise given to any persons to whom any moneys or costs charges or expenses are by any decree or order in equity or any rule or order at common law by the Supreme Court or any decree rule or order of the said court in its ecclesiastical or matrimonial jurisdiction respectively directed to be paid.

Execution on Foreign Judgment.

Memorial of judgment &c. under seal of Supreme Court of any other Australasian colony filed in Supreme Court at Brisbane shall be a record thereof and execution may issue.
19 Vic. No. 12 s. 1.
1 Pring 264.

20. It shall be lawful for any person in whose favor any judgment decree rule or order whereby any sum of money is made payable shall have been obtained in the Supreme Court of any of Her Majesty's Australasian colonies (including the islands and colonies of New Zealand) to cause a memorial of the same containing the particulars hereinafter mentioned and authenticated by the seal of the court wherein such judgment decree rule or order was obtained to be filed in the office of the Supreme Court at Brisbane and such memorial being so filed shall thenceforth be a record of such judgment decree rule or order and execution may issue thereon as hereinafter provided.

21. Every

21. Every such memorial shall be on parchment and signed by the party in whose favor such judgment decree rule or order was obtained or his attorney and shall contain the following particulars all of which shall be fairly written without interlineations or erasures and (with the exception of dates) in words at length (that is to say) the names and additions of the parties the form or nature of the action or suit or other proceeding and when commenced the date of the signing or entering up of the judgment or of passing the decree or of making the rule or order and the amount recovered or the decree pronounced or rule or order made and if there was a trial the date of such trial and the amount of verdict given.

31 VICTORIA No. 17.
Particulars of memorial.
19 Vic. No. 12 s. 2.
1 Pring 264.

22. It shall be lawful for any judge of the Supreme Court of this colony upon the application of the person in whose favor such judgment decree rule or order was obtained or his attorney to issue a summons calling upon the person against whom such judgment decree rule or order was obtained to show cause within such time after personal or other service of the summons as such judge shall direct why execution should not issue upon such judgment decree rule or order and such summons shall give notice that in default of appearance execution may issue accordingly and if the person so summoned does not appear or does not show sufficient cause against such summons it shall be lawful for any judge of the Supreme Court or the said court on due proof of such service as aforesaid to order execution to issue as upon a judgment decree rule or order of the Supreme Court of this colony subject to such terms and conditions (if any) as to such judge or court may seem fit and thereupon and subject thereto the person entitled to such execution shall have and be entitled to all such process and to all such rights and remedies for the enforcement thereof and the person against whom such execution is ordered shall in like manner be entitled to all such protective rights and advantages as they would respectively have been entitled to had such judgment decree rule or order been obtained in the Supreme Court of this colony and all such proceedings may be had or taken for the revival of such judgment decree rule or order or the enforcement thereof by and against persons not parties to such judgment decree rule or order as may be had for the like purposes upon any judgment decree rule or order of the Supreme Court of this colony.

Mode of obtaining execution.
19 Vic. No. 12 s. 3.
1 Pring 264.

Description of Parties.

23. In all actions upon bills of exchange or promissory notes or other written instruments any of the parties to which are designated by the initial letter or letters or some contraction of the christian or first name or names it shall be sufficient in every affidavit to hold to bail and in the process or declaration to designate such persons by the same initial letter or letters or contraction of the christian or first name or names instead of stating the christian or first name or names in full.

Initials of names may be used in some cases.
3 & 4 Wm. IV. c. 42 s. 12.

24. No plea in abatement for a misnomer shall be allowed in any personal action but in all cases in which a misnomer would but for this Act have been by law pleadable in abatement in such actions the defendant shall be at liberty to cause the declaration to be amended at the costs of the plaintiff by inserting the right name upon a judge's summons founded

Misnomer not to be pleaded in abatement.
3 & 4 Wm. IV. c. 42 s. 11.

31 VICTORIE No. 17. founded on an affidavit of the right name and in case such summons shall be discharged the costs of such application shall be paid by the party applying if the judge shall think fit.

Style of Defendant.

Co-partnerships all of whose members are not known.
4 Vic. No. 6 s. 17.
1 Pring 7.

25. And whereas in some cases business is carried on in the colony by persons in co-partnership or by one individual or more assuming the style of a co-partnership or acting as agent or agents for a co-partnership and in some of those cases the names of the actual members of such co-partnership or of some of them are or may be unknown in order to prevent any failure of justice in such cases be it enacted That every such co-partnership and the several members thereof or the persons or person having carried on business under the style of any such co-partnership may be sued in any action at law in the name or names of any one or more of the members of such co-partnership on behalf of all the members composing the same or in the name or names of any such agent or agents for and on behalf of such co-partnership so as that in all cases wherein it would have been necessary if this Act had not been passed to mention the names of all the members composing any such co-partnership it shall be sufficient to mention only the name or names of such one or more member or members or of such agent or agents on behalf of such co-partnership and every judgment obtained in any such action shall have the same effect and operation upon the property both real and personal of such co-partnership and also upon the property and persons of the several members thereof when discovered whether such property be joint or separate as if every member of such co-partnership had been actually and in fact a defendant in the action.

Proviso.
4 Vic. No. 6. s. 18.
1 Pring 7.

26. In every summons and other writ issued and declaration or other pleading filed on behalf of the plaintiff in any action brought under the provisions of the preceding section the style or firm of the co-partnership shall be specified and it shall distinctly appear that the defendant sued is so sued either as a member or as agent for and on behalf of a co-partnership provided also that no agent sued on behalf of a co-partnership shall by reason only of his being so sued be liable in person or in property to any judgment obtained in such action.

Appearance.

Appearance by the defendant in person to give an address at which proceedings may be served.
17 Vic. No. 21 s. 26.
2 Pring 1616.

27. Every appearance by the defendant in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service and if such address be not given the appearance shall not be received and if an address so given shall be illusory or fictitious the appearance shall be irregular and may be set aside by the court or a judge and the plaintiff may be permitted to proceed by sticking up the proceedings in the prothonotary's office without further service.

Mode of appearance to writ of summons.
17 Vic. No. 21 s. 27.
2 Pring 1616.
15 & 16 Vic. c. 76.
s. 31.

28. The mode of appearance to every writ of summons in a personal action shall be by delivering a memorandum in writing according to the following form or to the like effect—

“ A. plaintiff against C. D.)	The defendant C. D. appears in person. E. F. attorney for C. D. appears for him.
“ or against C. D. and another)	
“ or against C. D. and others.)	

[If the Defendant appears in Person here give his Address.]
Entered the day of 18 .”

Such

Such memorandum to be delivered to the proper officer and to be dated on 31 VICTORIA No. 17. the day of the delivery thereof.

Dilatory Pleas.

29. No dilatory plea shall be received in any court of record unless the party offering such plea do by affidavit prove the truth thereof or show some probable matter to the court to induce them to believe that the fact of such dilatory plea is true.

No dilatory plea to be received unless on affidavit.
4 Anne c. 16 s. 11.

Times of Proceeding.

30. A plaintiff shall be deemed out of court unless he declare within one year after the writ of summons is returnable.

Plaintiff to declare within a year.
17 Vic. No. 21 s. 53.

31. The defendant may appear at any time before judgment and if he appear after the time specified in the writ of summons he shall after notice of such appearance to the plaintiff or his attorney be in the same position as to pleadings or other proceedings in the action as if he had appeared in time. Provided always that a defendant appearing after the time appointed by the writ shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time.

2 Pring 1620.
15 & 16 Vic. c. 76 s. 58.

Appearance to be entered at any time before judgment.
17 Vic. No. 21 s. 25.
2 Pring 1616.
15 & 16 Vic. c. 76 s. 29.

32. In cases where the defendant is within the jurisdiction the time for pleading in bar unless extended by the court or a judge shall be eight days and a notice requiring the defendant to plead thereto in eight days otherwise judgment may whether the declaration be delivered or filed be indorsed upon the declaration or delivered separately.

Time for pleading where defendant is within jurisdiction to be eight days.
17 Vic. No. 21. s. 57.
2 Pring 1620.
15 & 16 Vic. c. 76 s. 63.

33. Where an amendment of any pleading is allowed no new notice to plead thereto shall be necessary but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead or within two days after amendment whichever shall last expire unless otherwise ordered by the court or a judge and in case the amended pleading has been pleaded to before amendment and is not pleaded to *de novo* within two days after amendment or within such other time as the court or a judge shall allow the pleadings originally pleaded thereto shall stand and be considered as pleaded in answer to such amended pleading.

Time for pleading after amendment.
17 Vic. No. 21 s. 83.
2 Pring 1623.
15 & 16 Vic. c. 76 s. 90.

34. Where any issue is or shall be joined in any cause and the plaintiff has neglected or shall neglect to bring such issue on to be tried according to the practice for the time being of the Supreme Court whether the plaintiff shall in the meantime have given notice of trial or not the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or assizes as the case may be next after the expiration of the notice and if the plaintiff afterward neglects to give notice of trial for such sittings or assizes or to proceed to trial in pursuance of the said notice given by the defendant the defendant may suggest on the record that the plaintiff has failed to proceed to trial although duly required so to do (which suggestion shall not be traversable but only be subject to be set aside if untrue) and may sign judgment for his costs provided that the court or a judge shall have power to extend the time for proceeding to trial with or without terms.

Proceedings where plaintiff neglects to bring on the cause to be tried.
17 Vic. No. 21 s. 91.
2 Pring 1625.
15 & 16 Vic. c. 76 s. 101.

35. Nothing herein contained shall affect the right of a defendant to take down a cause for trial after default of the plaintiff to proceed to trial according to the course and practice of the court and if records are entered for trial both by the plaintiff and the defendant the defendant's

Defendant's right to try upon default of the plaintiff preserved.
15 & 16 Vic. c. 76 s. 116.

record

31 VICTORIA No. 17. record shall be treated as standing next in order after the plaintiff's record in the list of causes and the trial of the cause shall take place accordingly.

Trial by proviso. 36. A plaintiff or defendant having obtained a verdict shall be entitled to issue execution in fourteen days unless the judge who tries the case or some other judge or the court shall order execution to issue at an earlier or later period with or without terms.

Execution fourteen days after trial. 17 Vic. No. 21 s. 95. 2 Pring 1625. 15 & 16 Vic. c. 76 s. 120.

Motion and Summons.

Affidavits on new matter. 20 Vic. No. 31 s. 18. 2 Pring 1649. 17 & 18 Vic. c. 125 s. 45.

37. Upon motions founded upon affidavits it shall be lawful for either party with leave of the court or a judge to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits subject to all such rules as shall hereafter be made respecting such affidavits.

Court or judge may direct oral examinations of deponents. 20 Vic. No. 31 s. 19. 2 Pring 1650. 17 & 18 Vic. c. 125 s. 46.

38. Upon the hearing of any motion or summons it shall be lawful for the court or judge at their or his discretion and upon such terms as they or he shall think reasonable from time to time to order such documents as they or he may think fit to be produced and such witnesses as they or he may think necessary to appear and be examined *viva voce* either before such court or judge or before any commissioner for taking affidavits and upon hearing such evidence or reading the deposition to make such rule or order as may be just.

Proceedings before and upon such examination. 20 Vic. No. 31 s. 20. 2 Pring 1650. 17 & 18 Vic. c. 125 s. 47.

39. The court or judge may by such rule or order or any subsequent rule or order command the attendance of the witnesses named therein for the purpose of being examined or the production of any writings or other documents to be mentioned in such rule or order and such rule or order shall be proceeded upon in the same manner and shall have the same force and effect as a rule of the court under the Evidence and Discovery Act for the time being and it shall be lawful for the court or judge or such commissioner to adjourn the examination from time to time as occasion may require and the proceedings upon such examination shall be conducted and the depositions taken down as nearly as may be in the mode in use with respect to the *viva voce* examination of witnesses under a commission or on interrogatories.

Refusal to make Affidavit.

Examination of person who refuses to make an affidavit. 20 Vic. No. 31 s. 21. 2 Pring 1650. 17 & 18 Vic. c. 125 s. 48.

40. Any party to any civil proceeding or motion for a criminal information in the Supreme Court requiring the affidavit of a person who refuses to make an affidavit may apply by summons for an order to such person to appear and be examined upon oath before a judge or any commissioner for taking affidavits to whom it may be most convenient to refer such examination as to the matters concerning which he has refused to make an affidavit and a judge may if he think fit make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined as aforesaid and for the production of any writings or documents to be mentioned in such order and may therein impose such terms as to such examination and costs of the application and proceedings thereon as he shall think fit.

Proceedings upon order for examination. 20 Vic. No. 31 s. 22. 2 Pring 1650.

41. Such order shall be proceeded upon in like manner as an order for a commission made under the Evidence and Discovery Act for the time being and the examination thereon shall be conducted and the depositions taken down and returned as nearly as may be in the mode used on *viva voce* examinations under such a commission.

Judgment.

Judgment.

42. No judgment as in the case of a nonsuit shall henceforth be given.

43. In actions where the plaintiff seeks to recover a debt or liquidated demand in money judgment by default shall be final.

44. In all actions where the plaintiff recovers a sum of money the amount to which he is entitled may be awarded to him by the judgment generally without any distinction being therein made as to whether such sum is recovered by way of a debt or damages.

45. And be it enacted and declared That no judgment in any action at law recovered or to be recovered shall bind or affect or be deemed to have bound or affected any lands or hereditaments in the said colony Provided always that every writ of execution or any such judgment against the lands or hereditaments of the person against whom such judgment shall be obtained when delivered to the sheriff of the said colony or to the sheriff of any district thereof as the case may be shall affect and be deemed to have bound such lands from the time of such delivery thereof in like manner as any writ of *fieri facias* now binds goods and chattels.

New Trial.

46. No new trial shall be granted by reason of the ruling of any judge that the stamp upon any document is sufficient or that the document does not require a stamp.

Execution.

47. In every case of execution the party entitled to execution may levy the poundage fees and expenses of the execution over and above the sum recovered.

48. If any judgment creditor who under the powers of the two sections next succeeding of this Act or of the fifty-sixth section of the "*Common Law Process Act of 1867*" shall have obtained any such charge or be entitled to the benefit of any security whatsoever shall afterwards and before the property so charged or secured shall have been converted into money or realised and the produce thereof applied towards payment of the judgment debt cause the person of the judgment debtor to be taken or charged in execution upon such judgment then and in such case such judgment creditor shall be deemed and taken to have relinquished all right and title to the benefit of such charge or security and shall forfeit the same accordingly.

Distringas.

49. If any person against whom any judgment shall have been entered up in the Supreme Court shall have any annuities funds, stock or shares of or in any public company (whether incorporated or not) or any deposit in any bank in Queensland or its dependencies standing in his name or in his own right or in the name of any person in trust for him or shall have or be entitled to any equity of redemption or other equitable interest which at law cannot be taken in execution it shall be lawful for a judge of the said court on the application of any judgment creditor to order that such annuities funds stock shares or deposits or any such equity of redemption or equitable interest or such of them or such part thereof respectively as he shall think fit shall

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No judgment as in case of nonsuit.

17 Vic. No. 21 s. 90.
2 Pring 1621.

Judgment by default when final.

15 & 16 Vic. c. 76 s. 100.

Judgment by default for liquidated demands final.

17 Vic. No. 21 s. 85.
2 Pring 1621.

15 & 16 Vic. c. 76 s. 39.

Judgment for money demands without distinction between debt and damages.

17 Vic. No. 21 s. 87.
2 Pring 1621.

15 & 16 Vic. c. 76 s. 95.

No judgment recovered to bind land unless execution lodged with the sheriff.

7 Vic. No. 16 s. 21.
2 Pring 1229.

No new trial for ruling as to stamp.

30 Vic. No. 14 s. 26.
17 & 18 Vic. c. 125 s. 31.

Expenses of execution.

17 Vic. No. 21 s. 96.
2 Pring 1625.

15 & 16 Vic. c. 76 s. 123.

Securities not realised to be relinquished if the person be taken in execution.

3 Vic. No. 18 s. 4.

1 Pring 263.

1 & 2 Vic. c. 110 s. 16

Stock and shares in public companies belonging to the debtor and standing in his own name to be charged by order of a judge.

3 Vic. No. 18 s. 2.

1 Pring 263.

1 & 2 Vic. c. 110 s. 14.

26 Vic. No. 7 s. 32.

2 Pring 1659.

31 VICTORIA No. 17. shall stand charged with the payment of the amount for which judgment shall have been so recovered and interest thereon and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favor by the judgment debtor. Provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of three calendar months from the date of such order.

Order of judge to be made in the first instance *ex parte* and on notice to the bank or company &c. to operate as a *distringas*.

3 Vic. No. 18 s. 3.

1 Pring 263.

1 & 2 Vic. c. 110 s. 15.

26 Vic. No. 7 s. 33.

2 Pring 1639.

50. And in order to prevent any person against whom judgment shall have been obtained from transferring receiving or disposing of any annuities funds stock shares or deposits hereby authorised to be charged for the benefit of the judgment creditor under an order of a judge as aforesaid every order of a judge charging any annuities funds stock or shares in any such public company or any deposit in any such bank under this Act may be made in the first instance *ex parte* and without any notice to the judgment debtor and shall be an order to show cause only and such order if any annuities funds stock shares or deposits standing in the name of the judgment debtor in his own right or in the name of any person in trust for him is to be affected by such order shall restrain such public company and the accountant and cashier of every such bank from permitting the transfer or disposal thereof and if after notice of such order to the person or persons to be restrained thereby or in case of corporations to any authorised agent of such corporation and before the same order shall be discharged or made absolute such corporation or person or persons shall permit any such transfer or disposal to be made then and in such case the corporation or person or persons so permitting such transfer or disposal shall be liable to the judgment creditor for the value or amount of the property so charged or so transferred or disposed of or such part thereof as may be sufficient to satisfy his judgment and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor and further unless the judgment debtor shall within a time to be mentioned in such order show to a judge of the said court sufficient cause to the contrary the said order shall after proof of notice thereof to the judgment debtor his attorney or agent be made absolute. Provided that any such judge shall upon application of the judgment debtor or any person interested have full power to discharge or vary such order and to award such costs upon such application as he may think fit.

Garnishment.

Examination of judgment debtor as to his property.

20 Vic. No. 31 s. 26.

2 Pring 1651.

17 & 18 Vic. c. 125

s. 60.

51. It shall be lawful for any creditor who has obtained a judgment in the Supreme Court to apply to the court or a judge for a rule or order that the judgment debtor be orally examined as to his property or means available for the satisfaction of such judgment and in particular as to any and what debts are owing to him before a judge or such commissioner for taking affidavits as the court or judge shall appoint and the court or judge may make such rule or order for the examination of such judgment debtor and for the production of any books or documents and the examination shall be conducted in the same manner as in the case of an oral examination under the Evidence and Discovery Act for the time being.

52. It

52. It shall be lawful for a judge upon the *ex parte* application of such judgment creditor either before or after such oral examination and upon affidavit by himself or his attorney stating that judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to the judgment debtor and is within the jurisdiction to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor shall be attached to answer the judgment debt and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge or such officer of the court as such judge shall appoint to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to satisfy the judgment debt.

53. Service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the judge shall direct shall bind such debts in his hands.

54. If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor or an amount equal to the judgment debt and does not dispute the debt due or claimed to be due from him to the judgment debtor or if he does not appear upon summons then the judge may if he think fit order execution to issue and it may be sued forth accordingly without any previous writ or process to levy the amount due from such garnishee towards satisfaction of the judgment debt.

55. If the garnishee disputes his liability the judge instead of making an order that execution shall issue may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ calling upon him to show cause why there should not be execution against him for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt and for costs of suit and the proceedings upon such suit shall be the same as nearly as may be as upon a writ of revivor issued under the Joinder and Revivor Act for the time being.

56. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid or levied although such proceeding may be set aside or the judgment reversed.

57. There shall be kept at the office of the prothonotary of the Supreme Court a debt attachment book and in such book entries shall be made of the attachment and proceedings thereon with names dates and statements of the amount recovered and otherwise and copies of any entries made therein may be taken by any person upon application to the prothonotary.

58. The costs of any application for an attachment of debt under this Act and of any proceedings arising from or incidental to such application shall be in the discretion of the court or a judge.

59. In proceedings to obtain an attachment of debts under this Act the judge may in his discretion refuse to interfere where from the smallness of the amount to be recovered or of the debt sought to be attached or otherwise the remedy sought would be worthless or vexatious.

60. Whenever

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Judge may order an attachment of debts. 20 Vic. No. 31 s. 27. 2 Pring 1651. 17 & 18 Vic. c. 125 s. 61.

Order for attachment to bind debts. 20 Vic. No. 31 s. 28. 2 Pring 1651. 17 & 18 Vic. c. 125 s. 62.

Proceedings to levy amount due from garnishee to judgment debtor. 20 Vic. No. 13 s. 29. 2 Pring 1651. 17 & 18 Vic. c. 125 s. 63.

Judge may allow judgment creditor to sue garnishee. 20 Vic. No. 13 s. 30. 2 Pring 1651. 17 & 18 Vic. c. 125 s. 64.

Garnishee discharged by payment or levy. 20 Vic. No. 31 s. 31. 2 Pring 1651. 17 & 18 Vic. c. 125 s. 65.

Attachment book to be kept by the prothonotary. 20 Vic. No. 31 s. 32. 2 Pring 1652. 17 & 18 Vic. c. 125 s. 66.

Costs of application. 20 Vic. No. 31 s. 33. 2 Pring 1652. 17 & 18 Vic. c. 125 s. 67.

Judge may refuse to interfere in proceeding to attach debts. 26 Vic. No. 7 s. 23. 2 Pring 1657. 23 & 24 Vic. c. 120 s. 28.

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Proceedings where third person has a lien.

26 Vic. No. 7 s. 24.

2 Pring 1658.

23 & 24 Vic. c. 126 s. 29.

Judge may bar claim of third person and make order.

26 Vic. No. 7 s. 25.

2 Pring 1658.

23 & 24 Vic. c. 126 s. 30.

60. Whenever in proceedings to obtain an attachment of debts under this Act it is suggested by the garnishee that the debt sought to be attached belongs to some third person who has a lien or charge upon it the judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt.

61. After hearing the allegations of such third person under such order and of any other person whom by the same or any subsequent order the judge may think fit to call before him or in case of such third person not appearing before him upon such summons the judge may order execution to issue to levy the amount due from such garnishee or the judgment creditor to proceed against the garnishee according to the provisions of this Act and he may bar the claim of such third person or make such other order as he shall think fit upon such terms in all cases with respect to the lien or charge (if any) of such third person and to costs as he shall think just and reasonable.

View.

View by rule without writ.

15 & 16 Vic. c. 76

s. 114.

62. A writ of view shall not be necessary or used but whether the view is to be had by a common or special jury it shall be sufficient to obtain a rule of the court or judge's order directing a view to be had and the sheriff upon request shall deliver to either party the names of the viewers and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.

Inquiry before Prothonotary.

Inquiry of damages may be directed to take place before the prothonotary.

17 Vic. No. 21 s. 36.

2 Pring 1624.

15 & 16 Vic. c. 76 s. 94.

63. In actions in which it shall appear to the court or a judge that the amount of damages sought to be recovered by the plaintiff is substantially a matter of calculation it shall not be necessary to issue a writ of inquiry but the court or a judge may direct that the amount for which final judgment is to be signed shall be ascertained by the prothonotary of the said court and the attendance of witnesses and the production of documents before such prothonotary may be compelled by subpoena in the same manner as before a jury upon a writ of inquiry and it shall be lawful for such prothonotary to receive affidavits and depositions as evidence upon the inquiry and to adjourn the inquiry from time to time as occasion may require and the prothonotary shall indorse upon the rule or order for referring the amount of damages to him the amount found by him and shall deliver the rule or order with such indorsement to the plaintiff and such and the like proceedings may thereupon be had as to taxation of costs signing judgment and otherwise as upon the finding of a jury upon a writ of inquiry.

Writs of Trial and Inquiry.

No rule to compute.

15 & 16 Vic. c. 76

s. 92.

Remedy by writ of inquiry or trial.

20 Vic. No. 8 s. 2.

2 Pring 1752.

4 Vic. No. 22 s. 26.

2 Cary 731.

64. No rule to compute shall be necessary or used.

65. Writs of inquiry in all cases where breaches shall have been suggested under any statute in such case made and provided and also writs of inquiry or writs of trial in other cases where the debt matter or damages sought to be recovered shall not exceed one hundred pounds and where any judge of the Supreme Court see fit and shall be satisfied that no difficult question of law or fact will be likely to arise may (by leave of any such judge) be issued out of the said court directed to the sheriff or to any commissioner of the said court or to a judge of the district court or to any chairman of any court of quarter

quarter sessions under such general rules or orders as shall in that behalf be from time to time made and established as hereinafter provided by the said Supreme Court for the determination of all such matters in such manner as shall be most conducive to the advantage of suitors and to the avoiding of expense and delay.

66. On the return of every writ of inquiry or writ of trial issued or to be issued in any of the cases contemplated by this Act for the more effectual administration of justice in that behalf the party succeeding may tax his costs and sign judgment and issue execution forthwith unless the sheriff commissioner judge or chairman to whom such writ shall have been directed shall certify to the court that in his opinion an opportunity should be afforded to the unsuccessful party to move for a new trial or assessment (as the case may be) or unless a judge shall stay judgment or execution therein.

Proceedings on return of writs of inquiry or trial.
5 Vic. No. 9 s. 20.
2 Cary 736.
See 20 Vic. No. 8 s. 1.
2 Pring 1752.

67. Any such writ may be issued (notwithstanding any higher amount or sum inserted in the declaration) where the debts damages or sum sought to be recovered shall be in fact not more than one hundred pounds and may be so issued at the instance of either party plaintiff or defendant and every person to whom any such writ shall be directed shall for the purposes thereof have the same powers as a sheriff in England hath or may exercise to whom a writ of trial shall have been directed by one of Her Majesty's courts or judges at Westminster.

Writs of inquiry and trial.
10 Vic. No. 10 s. 15.
2 Pring 1240.
20 Vic. No. 8 s. 2.
2 Pring 1752.

68. In every such action as aforesaid the fee for executing a writ of trial shall be two guineas which shall include the charge for summoning four jurors and returning the writ duly indorsed and such fee together with the proper amount to be paid to the jurors shall be paid to the person to whom the writ is directed when the writ is delivered to him and the sum so paid shall be costs in the cause.

Commissioner's fee for writ of trial.
10 Vic. No. 10 s. 16.
2 Pring 1240.

69. Every such person shall together with the writ and the indorsement of the verdict thereon return to the Supreme Court his notes of the evidence on such inquiry or trial and it shall be lawful for the said court or any judge thereof to permit any amendment of the said indorsement in accordance with such notes and not being repugnant to the verdict but so as to give effect to the same Provided that where justice shall appear to have been done by such verdict on the merits the same shall not in any case be set aside or impeached for any mere omission to find any issue or for any technical defect or error whatsoever Provided also that where any application shall be made to the court or a judge either to set aside such verdict or to amend the indorsement thereof on the writ such reasonable terms may be imposed on the parties and such order made respecting the costs as to such court or judge shall seem meet.

Commissioner's notes of evidence &c.
10 Vic. No. 11. s. 17.
2 Pring 1240.

Precepts.

70. The court or any judge thereof may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury for the trial of any cause or matter depending in such court at such time and place and in such manner as they or he may think fit.

Rule or order for summoning jury.
20 Vic. No. 31 s. 25.
2 Pring 1651.
17 & 18 Vic. c. 125 s. 59.

Practice at the Trial.

71. It shall be lawful for the court or judge at the trial of any cause where they or he may deem it right for the purposes of justice to order

Power to adjourn trial.

31 VICTORIA No. 17. order an adjournment for such time and subject to such terms and conditions as to costs and otherwise as they or he may think fit.

20 Vic. No. 31 s. 9. 72. Upon all debts or sums certain hereafter to be recovered in any
2 Pring 1648. action the jury on the trial of any issue or assessment of any damages may
17 & 18 Vic. c. 125 if they think fit allow interest to the creditor at a rate not exceeding eight
s. 19. per centum (or in respect of any bill of exchange or promissory note at a
Interest to be allowed rate not exceeding twelve per centum per annum) from the time when such
on trials and assess- debt or sum was payable if payable by virtue of some written instrument
ments in certain cases. and at a date or certain time or if payable otherwise then from the time
25 Vic. No. 13 s. 52. when demand of payment shall have been made in writing giving notice
2 Pring 1605. to the debtor that interest would be claimed from the date of such demand
3 & 4 Wm. IV. Provided that nothing herein contained shall extend to authorise the
c. 42 s. 28. computation of interest on any bill of exchange or promissory note at a
higher rate than eight per centum per annum where there shall have been
no plea pleaded.

Damages in the 73. The jury may on any trial or assessment of damages give
nature of interest in damages in the nature of interest if they think fit over and above the
certain actions. value of the goods at the time of the conversion in all actions of trover or
25 Vic. No. 13 s. 53. trespass concerning goods and over and above the money receivable in all
2 Pring 1605. actions on any policies of insurance.
3 & 4 Wm. IV. c.
42 s. 29.

Persons may be ex- 74. Any person present at any trial or other proceeding wherein
amined without a he might have been compellable to give evidence and produce documents
subpœna. by virtue of a subpœna or other summons or order duly issued and served
22 Vic. No. 7 s. 5. for that purpose shall be compellable to give evidence and produce documents
1 Pring 574. then in his possession and power in the same manner and in case of
refusal shall be subject to the same penalties and liabilities as if he had
been duly subpœnaed or summoned for that purpose.

Witnesses without 75. Where any person duly bound by recognizance or served
just excuse neglecting with a subpœna to attend in any court as a witness at the trial of
to attend. any case civil or criminal shall fail to appear when called in open
22 Vic. No. 7 s. 13. court either at such trial or upon the day appointed for such trial it
1 Pring 575. shall be lawful for the court upon proof of such recognizance or of
his having been duly served with such subpœna to call upon such
person to show cause why execution upon such recognizance or why
an attachment for disobedience to such subpœna should not be issued
against him or upon proof of those facts and also that the person's
non-appearance was without just cause or reasonable excuse and upon
oath that he will probably be able to give material evidence to issue
a warrant to bring him before the court to give evidence at such
trial.

Mode of proceeding. 76. Such proof may be oral before the court or by affidavit
22 Vic. No. 7 s. 14. sworn before any commissioner of the Supreme Court or any justice of
1 Pring 575. the peace and every rule or order to show cause as aforesaid may be
made returnable either before the court itself at the then sittings or at
some future sitting or in respect of the non-appearance of a witness at a
circuit court or on the trial of a case pending in the Supreme Court
the rule or order may be made returnable in the Supreme Court And
on the return of any such rule or order the court may deal with the
case as the Supreme Court might and would have done upon a rule
to the like effect issued out of that court.

Two Nisi Prius Courts.

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77. It shall be lawful for a judge of the Supreme Court at the request of the Chief Justice to try the causes entered for trial at *nisi prius* in Brisbane on the same days on which the said Chief Justice or any other judge of the said Supreme Court shall be sitting to try causes at Brisbane so that the trial of two causes may be proceeded with at the same time and all jurors witnesses and other persons who may have been summoned or required to attend at or for the trial of any cause before the said Chief Justice or judge shall give their attendance at and for the trial thereof before such other judge so requested as may be sitting to try the same by virtue of this Act and it shall be lawful for the associates and other officers to attend before such judge and the trial of every cause which shall be so had by virtue of this Act shall if necessary be entered of record as having been had before the judge by whom such cause in fact was tried.

Two judges may sit at same time for trial as at *nisi prius*.
17 & 18 Vic. c. 125 s. 2.

Trial without Jury.

78. The parties to any cause may by consent in writing signed by them or their attorneys as the case may be leave the decision of any issue of fact to the court. Provided that the court upon a rule to show cause or a judge on summons shall in their or his discretion think fit to allow such trial or provided the judges of the Supreme Court shall in pursuance of the power hereinafter given to them make any general rule or order dispensing with such allowance either in all cases or in any particular class or classes of cases to be defined in such rule or order and such issue of fact may thereupon be tried and determined and damages assessed where necessary in open court either in term or vacation by any judge who might otherwise have presided at the trial thereof by jury either with or without the assistance of any other judge or judges of the said Supreme Court and the verdict of such judge or judges shall be of the same effect as the verdict of a jury save that it shall not be questioned upon the ground of being against the weight of evidence and the proceedings upon and after such trial as to the power of the court or judge the evidence and otherwise shall be the same as in case of trial by jury.

Judge may by consent try questions of fact.
17 & 18 Vic. c. 125 s. 1.

79. If upon the trial of any issue of fact by a judge under this Act it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him it shall be lawful for him at his discretion to order that such matter of account be referred to an arbitrator appointed by the parties or to an officer of the court or an associate or in country cases to a judge of any district court or a commissioner of the Supreme Court upon such terms as to costs and otherwise as such judge shall think reasonable and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial and it shall be competent for the judge to proceed to try and dispose of any other matters in question not referred in like manner as if no reference had been made.

Power to judge to direct arbitration at time of trial when issues of fact left to his decision.
17 & 18 Vic. c. 125 s. 6.

Amendment.

80. It shall be lawful for the Supreme Court and every judge thereof and any judge sitting at *nisi prius* and for every circuit court

Amendment.
17 Vic. No. 21 s. 172.
2 Pring 1638.

31 VICTORIA No. 17. court at all times to amend all defects and errors in any proceeding in civil causes whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the court or judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

In cases where a variance shall appear between written or printed evidence and the record the court may order the record to be amended.
9 Geo. IV. c. 15.

81. It shall and may be lawful for every court of record holding plea in civil actions any judge sitting at *nisi prius* if such court or judge shall see fit so to do to cause the record writ or document on which any trial may be pending before any such judge or court in any civil action when any variance shall appear between any matter in writing or in print produced in evidence and the recital or setting forth thereof upon the record writ or document whereon the trial is pending to be forthwith amended in such particular by some officer of the court on payment of such costs (if any) to the other party as such judge or court shall think reasonable and thereupon the trial shall proceed as if no such variance had appeared and in case such trial shall be had at *nisi prius* the order for the amendment shall be indorsed on the postea and returned together with the record and thereupon the papers rolls and other records of the court from which such record issued shall be amended accordingly.

Amendments to be made in the record in certain cases.
3 & 4 Wm. IV. c. 42 s. 23.

82. It shall be lawful for any court of record holding plea in civil actions and any judge sitting at *nisi prius* and any judge or other officer presiding at the trial of any writ if such court or judge or officer shall see fit so to do to cause the record writ or document on which any trial may be pending before any such court or judge in any civil action or in any information in the nature of a *quo warranto* or proceedings on a mandamus when any variance shall appear between the proof and the recital or setting forth on the record writ or document on which the trial is proceeding of any contract custom prescription name or other matter in any particular or particulars in the judgment of such court or judge or officer not material to the merits of the case and by which the opposite party cannot have been prejudiced in the conduct of his action prosecution or defence to be forthwith amended by some officer of the court or otherwise both in the part of the pleadings where such variance occurs and in every other part of the pleadings which may become necessary to amend on such terms as to payment of costs to the other party or postponing the trial to be had before the same or another jury or both payment of costs and postponement as such court or judge or officer shall think reasonable and in case such variance shall be in some particular or particulars in the judgment of the court or judge or officer not material to the merits of the case but such as that the opposite party may have been prejudiced thereby in the conduct of his action prosecution or defence then such court or judge or officer shall have power to cause the same to be amended upon payment of costs to the other party and withdrawing the record or postponing the trial as aforesaid as such court or judge or officer shall think reasonable and after any such amendment the trial shall proceed in case the same shall be proceeded with in the same manner in all respects both with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had appeared and

and in case such trial shall be had at *nisi prius* or by virtue of such writ as aforesaid the order for the amendment shall be indorsed on the postea or the writ as the case may be and returned together with the record or writ and thereupon such papers rolls and other records of the court from which such record or writ issued as it may be necessary to amend shall be amended accordingly and in case the trial shall be had in any court of record then the order for amendment shall be entered on the roll or other document upon which the trial shall be had provided that it shall be lawful for any party who is dissatisfied with the decision of such judge or other officer respecting his allowance of any such amendment to apply to the court from which such record or writ issued for a new trial upon that ground and in case any such court shall think such amendment improper a new trial shall be granted accordingly on such terms as the court shall think fit or the court shall make such other order as to it may seem meet.

83. In all cases of variance between the proof and the record in any action at law now or hereafter depending in the Supreme Court it shall be lawful for the said court or the judge before whom the trial is had if such court or judge shall think fit instead of causing the record or document on which such trial is proceeding to be amended at such trial as by the rules and course of practice of the said court is provided in that behalf to direct the jury to find the fact or facts according to the evidence and thereupon such finding shall be stated on the said record or document and notwithstanding the finding on the issue or issues joined the said Supreme Court shall thereafter if it shall appear to the said court that the variance was immaterial to the merits of the case and such as could not have prejudiced the opposite party in the conduct of the action or defence give judgment according to the right and justice of the case.

Warrants of Attorney.

84. From and after the commencement of this Act no warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall be of any force unless there shall be present some attorney of the Supreme Court on behalf of such person expressly named by him and attending at his request to inform him of the nature and effect of such warrant or *cognovit* before the same is executed which attorney shall subscribe his name as a witness to the due execution thereof and thereby declare himself to be attorney for the person executing the same and state that he subscribes as such attorney.

85. A warrant of attorney to confess judgment or *cognovit actionem* not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof or was fully informed of the same.

86. If the holder thereof shall think fit every warrant of attorney to confess judgment in any personal action or a true copy thereof and of the attestation thereof and the defeasance and indorsements thereon in case such warrant of attorney shall be given to confess judgment in Her Majesty's Supreme Court or such a true copy thereof as aforesaid in case such warrant of attorney shall be given to confess judgment in any other court shall within twenty-one days after the execution of such warrant of attorney

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Amendments at trial.
25 Vic. No. 13 s. 65.
2 Pring p. 1607.
3 & 4 Wm. IV. c 24
s. 24.

Warrants of attorney
and *cognovit actionem*
to be executed in the
presence of an attorney
on behalf of the
person.
1 & 2 Vic. c. 110 s. 9.

Warrants &c. not
formally executed
invalid.
1 & 2 Vic. c. 110 s. 10.

Warrants of attorney
in personal actions to
be filed within twenty-
one days.
3 Geo. IV. c 39 s. 1.

31 VICTORIA No. 17. attorney be filed together with an affidavit of the time of the execution thereof with the prothonotary of the said Supreme Court.

In what case warrant of attorney deemed fraudulent.

3 Geo. IV. c. 39 s. 2.

87. If at any time after the expiration of twenty-one days next after the execution of such warrant of attorney an adjudication of insolvency shall be issued against the person who shall have given such warrant of attorney under which he shall be duly found and declared an insolvent then and in such case unless such warrant of attorney or a copy thereof shall have been filed as aforesaid within the said space of twenty-one days from the execution thereof or unless judgment shall have been signed or execution issued on such warrant of attorney within the same period such warrant of attorney and the judgment and execution thereon shall be deemed fraudulent and void against the assignees under such adjudication and such assignees shall be entitled to recover back and receive for the use of the creditors of such insolvent at large all and every the moneys levied or effects seized under and by virtue of such judgment and execution.

Cognovit.

Cognovit actionem to be filed in like manner or void against creditors.

3 Geo. IV. c. 39 s. 3.

88. Every *cognovit actionem* given by any defendant in any personal action in case the action in which such *cognovit actionem* shall be given shall be in the said Supreme Court or a true copy of such *cognovit actionem* in case the action wherein the same is given shall be in any other court shall together with an affidavit of the time of the execution thereof be filed with the said prothonotary in like manner as such warrants of attorney or copies thereof and affidavits within the space of twenty-one days after such *cognovit actionem* shall have been executed otherwise such *cognovit actionem* and any judgment entered up thereon and any execution taken out on such judgment shall be deemed fraudulent and void against the assignees of the person giving such *cognovit actionem* under an adjudication of insolvency issued against him after the expiration of the said twenty-one days in like manner as warrants of attorney and judgments and executions thereon are deemed and taken to be fraudulent and void by this Act.

Warrants and Cognovits.

Defeasance of warrant of attorney &c. to be written on same paper.

3 Geo. IV. c. 39 s. 4.

89. If such warrant of attorney or *cognovit* shall be given subject to any defeasance or condition such defeasance or condition shall be written on the same paper or parchment on which such warrant of attorney or *cognovit actionem* shall be written before the time when the same or a copy thereof respectively shall be filed otherwise such warrant of attorney or *cognovit actionem* shall be null and void to all intents and purposes.

Officer of court to keep a book containing list and particulars of each warrant of attorney and *cognovit*.

3 Geo. IV. c. 39 s. 5.

90. The said officer of the said Supreme Court shall cause every warrant of attorney and *cognovit actionem* in any personal action and every copy thereof filed in his said office to be numbered and shall keep a book or books in which he shall cause to be fairly entered an alphabetical list of every such warrant of attorney or *cognovit* containing therein the names and additions and descriptions of the respective defendants or persons giving such warrants of attorney or *cognovits* and also the names additions and descriptions of the plaintiff or persons in whose favor the same shall have been given together with the number and dates of the execution and filing of the same or of a copy thereof respectively and the sums for which judgment is to be entered up and also the sums which are specified to be paid by the defeasances or conditions in such warrant of attorney or *cognovit actionem* and the times

times when the same are thereby made payable according to the form 31 VICTORIA No. 17. contained in the schedule hereunder which said book or books and every warrant of attorney and *cognovit actionem* or copy thereof filed in the said office shall be searched and viewed by all persons at all seasonable times paying to the officer for every search against one person the sum of sixpence and no more.

Name &c. of the person giving the warrant of attorney or cognovit.	Name &c. of person for whom given.	Whether warrant of attorney or cognovit and number.	Date of execution.	Date of Filing.	Sum for which given.	Defeasance.
A. B. of manufacturer.	C. D. of merchant.	Warrant of attorney No. 1.	Jan. 1st 186	Jan. 10	£1,000	To secure £500 payable &c.

91. The said officer shall be entitled to receive for his trouble in filing and entering such warrant of attorney or cognovit or a copy thereof as aforesaid the sum of one shilling and no more. Fee for filing. 3 Geo. IV. c. 39 s. 6.

92. Any person shall be entitled to have an office copy of each warrant of attorney or *cognovit actionem* or of the copy thereof filed as aforesaid upon paying for the same at the like rate as for office copies of judgments in each of such courts respectively. Office copies to be had on paying. 3 Geo. IV. c. 39 s. 7.

93. It shall be lawful for any of the judges of the court in which such warrant of attorney or *cognovit actionem* is given to order a memorandum of satisfaction to be written upon such warrant of attorney *cognovit actionem* or copy thereof respectively as aforesaid if it shall appear to him that the debt for which such warrant of attorney or *cognovit actionem* is given as a security shall have been satisfied or discharged. Satisfaction entered on warrants of attorney and cognovits. 3 Geo. IV. c. 39 s. 8.

Powers of the Court.

94. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper. Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein. General rules may be made by the judges. 27 Vic. No. 21 s. 174. 2 Pring 1638. 15 & 16 Vic. c. 76 s. 223. 27 Vic. No. 14 s. 20. 3 Pring 316.

Commencement and Short Title.

95. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Common Law Practice Act of 1867.*" Commencement of Act. Short title.

31 VICTORIÆ No. 14. **An Act to Consolidate and Amend the Laws relating to the Joinder of Causes of Action and of Parties to Actions and to the Revivor of Actions at Common Law.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the joinder of causes of action and of parties to actions and to the revivor of actions at common law Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Joinder of Causes of Action.

Joinder of claims by husband and wife with claims in right of husband.
17 Vic. No. 21 s. 36.
2 Pring 1618.
15 & 16 Vic. c. 76 s. 10.

1. In an action brought by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as co-plaintiff it shall be lawful for the husband to add thereto claims in his own right and separate actions brought in respect of such claims may be consolidated if the court or a judge shall think fit Provided that in the case of the death of either plaintiff such suit so far only as relates to the causes of action if any which do not survive shall abate.

Different causes of action may be joined but separate trials may be ordered.
17 Vic. No. 21 s. 37.
2 Pring 1618.
15 & 16 Vic. c. 76 s. 41.

2. Causes of action of whatever kind provided they be by and against the same parties and in the same rights may be joined in the same suit but this shall not extend to replevin or ejectment and where two or more of the causes of action so joined are local and arise in different districts the venue may be laid in either of such districts but the court or a judge shall have power to prevent the trial of different causes of action together if such trial would be inexpedient and in such case such court or judge may order separate records to be made up and separate trials to be had.

Joinder of Plaintiffs.

Nonjoinder and misjoinder of plaintiffs may be amended before trial.
17 Vic. No. 21 s. 30.
2 Pring 1616.
15 & 16 Vic. c. 76 s. 34.

3. It shall and may be lawful for the court or a judge at any time before the trial of any cause to order that any person or persons not joined as plaintiff or plaintiffs in such cause shall be so joined or that any person or persons originally joined as plaintiff or plaintiffs shall be struck out from such cause if it shall appear to such court or judge that injustice will not be done by such amendment and that the person or persons to be added as aforesaid consent either in person or by writing under his her or their hands to be so joined or that the person or persons to be struck out as aforesaid were originally introduced without his her or their consent or that such person or persons consent in manner aforesaid to be so struck out and such amendment shall be made upon such terms as to the amendment of the pleadings (if any) postponement of the trial and otherwise as the court or judge by whom such amendment is made shall think proper and when any such amendment shall have been made the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs

plaintiffs shall subject to any terms imposed as aforesaid be the same as if such person or persons had been originally joined in such cause. 31 VICTORIA No. 14.

4. The joinder of too many plaintiffs shall not be fatal but every action may be brought in the name of all the persons in whom the legal right may be supposed to exist and judgment may be given in favor of the plaintiffs by whom the action is brought or one or more of them or in case of any question of misjoinder being raised then in favor of such one or more of them as shall be adjudged by the court to be entitled to recover. Provided always that the defendant though unsuccessful shall be entitled to his costs occasioned by joining any person or persons in whose favor judgment is not given unless otherwise ordered by the court or a judge.

Joinder as plaintiffs of all persons supposed to be legally entitled.
26 Vic. No. 7 s. 15.
2 Pring 1657.
23 & 24 Vic. c. 126 s. 19.

5. Upon the trial of such cause a defendant who has therein pleaded a set-off may obtain the benefit of his set-off by proving either that all the parties named as plaintiffs are indebted to him notwithstanding that one or more of such plaintiffs was or were improperly joined or on proving that the plaintiff or plaintiffs who establish their right to maintain the cause is or are indebted to him.

Defendant to have benefit of set-off though plaintiffs improperly joined.
26 Vic. No. 7 s. 16.
2 Pring 1657.
23 & 24 Vic. c. 126 s. 20.

6. No other action shall be brought against the defendant by any person so joined as plaintiff in respect of the same cause of action.

No other action for same claim.
23 & 24 Vic. c. 126 s. 21.

7. In case it shall appear at the trial of any action that there has been a misjoinder of plaintiffs or that some person or persons not joined as plaintiff or plaintiffs ought to have been so joined and the defendant shall not at or before the time of pleading have given notice in writing that he objects to such nonjoinder specifying therein the name or names of such person or persons such misjoinder or nonjoinder may be amended as a variance at the trial by the court or a judge in like manner as to the mode of amendment and proceedings consequent thereon or as near thereto as the circumstances of the case will admit as in the case of amendments of variances if it shall appear to such court or judge that such misjoinder or nonjoinder was not for the purpose of obtaining an undue advantage and that injustice will not be done by such amendment and that the person or persons to be added as aforesaid consent either in person or by writing under his her or their hands to be so joined or that the person or persons to be struck out as aforesaid were originally introduced without his her or their consent or that such person or persons consent in manner aforesaid to be so struck out and such amendment shall be made upon such terms as the court or judge by whom such amendment is made shall think proper and when any such amendment shall have been made the liability of any person or persons who shall have been added as co-plaintiff or co-plaintiffs shall subject to any terms imposed as aforesaid be the same as if such person or persons had been originally joined in such action and every circuit court or officer presiding at any trial shall be deemed a court or judge within the meaning of this section.

26 Vic. No. 7 s. 17.
2 Pring 1657.
Nonjoinder and misjoinder of plaintiffs may be amended at the trial as in cases of amendments of variances.
17 Vic. No. 21 s. 31.
2 Pring 1617.
15 & 16 Vic. c. 76 s. 35.

8. In case such notice be given or any plea in abatement of nonjoinder of a person or persons as co-plaintiff or co-plaintiffs in cases where such plea in abatement may be pleaded by the defendant the plaintiff shall be at liberty without any order to amend the writ and other proceedings before plea by adding the name

Upon notice or plea of nonjoinder of plaintiffs proceedings may be amended.
17 Vic. No. s. 32.
2 Pring 1617.
15 & 16 Vic. c. 76 s. 36.

or

31 VICTORIA No. 14. or names of the person or persons named in such notice or plea in abatement and to proceed in the action without any further appearance on payment of the costs of and occasioned by such amendment only and in such case the defendant shall be at liberty to plead *de novo*.

Joinder of Defendants.

Misjoinder of defendants may be amended before or at trial.
17 Vic. No. 21 s. 33.
2 Pring 1617.
15 & 16 Vic. c. 76 s. 37.

9. It shall and may be lawful for the court or a judge in the case of the joinder of too many defendants in any action on contract at any time before the trial of such cause to order that the name or names of one or more of such defendants be struck out if it shall appear to such court or judge that injustice will not be done by such amendment and the amendment shall be made upon such terms as the court or judge by whom such amendment is made shall think proper and in case it shall appear at the trial of any action on contract that there has been a misjoinder of defendants such misjoinder may be amended as a variance at the trial in like manner as the misjoinder of plaintiffs has been hereinbefore directed to be amended and upon such terms as the court or judge or other presiding officer by whom such amendment is made shall think proper.

Where several are sued as joint contractors the verdict may be against some of them only.
4 Vic. No. 6 s. 19.
1 Pring 7.

10. Unless the judge or presiding officer shall otherwise order in all cases where two or more persons shall be sued as joint contractors the plaintiff shall be entitled to a judgment (or to a verdict and judgment as the case may be) against such of the defendants as shall appear to be liable although one or more of the persons made a defendant or defendants shall appear not to be liable. Provided that in every such case the defendant or defendants not liable shall have judgment and be entitled to costs against the plaintiff and to the like remedy for the same as a defendant hath in any ordinary case.

Upon plea in abatement for nonjoinder of defendants proceedings may be amended.
17 Vic. No. 21 s. 34.
2 Pring 1618.
15 & 16 Vic. c. 76 s. 38.

11. In any action on contract where the nonjoinder of any person or persons as a co-defendant or co-defendants has been pleaded in abatement the plaintiff shall be at liberty without any order to amend the writ of summons and the declaration by adding the name or names of the person or persons named in such plea in abatement as joint contractors and to serve the amended writ upon the person or persons so named in such plea in abatement and to proceed against the original defendant or defendants and the person or persons so named in such plea in abatement. Provided that the date of such amendment shall as between the person or persons so named in such plea in abatement and the plaintiff be considered for all purposes as the commencement of the action.

Provision in the case of subsequent proceedings against the persons named in a plea in abatement for nonjoinder of defendants.
17 Vic. No. 21 s. 35.
2 Pring 1618.
15 & 16 Vic. c. 76 s. 39.

12. In all cases after such plea in abatement and amendment if it shall appear upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original defendant or defendants the original defendant or defendants shall be entitled as against the plaintiff to the costs of such plea in abatement and amendment but if at such trial it shall appear that the original defendant or any of the original defendants is or are liable but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties the plaintiff shall nevertheless be entitled to judgment against the other defendant or defendants who shall appear to be liable and every defendant who is not so liable shall have judgment and shall be entitled

entitled to his costs as against the plaintiff who shall be allowed the same together with the costs of the plea in abatement and amendment as costs in the cause against the original defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person. Provided that any such defendant who shall have so pleaded in abatement shall be at liberty on the trial to adduce evidence of the liability of the defendants named by him in such plea in abatement.

13. If after any such plea in abatement the plaintiff shall without proceeding to trial commence another action against the original defendant or defendants and the person or persons named in such plea as a joint contractor or contractors and if thereafter it shall appear either by the pleadings in such subsequent action or by the evidence at the trial that all the original defendants are liable but that any of the persons named in such plea is or are not liable and the defendant or defendants not so liable shall accordingly under the provisions of this Act obtain judgment for his or their costs against the plaintiff the amount of the costs payable to the defendant or defendants so succeeding shall be allowed to the plaintiff as costs in the cause against such of the defendants so appearing to be liable as shall have pleaded in abatement the non joinder of such person or persons. Provided that any defendant having so pleaded in abatement shall be at liberty at the trial to adduce evidence of the liability of the parties named by him in such plea.

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Provision for subsequent proceedings.
4 Vic. No. 6 s. 21.
1 Pring 8.
3 & 4 Wm. IV. c. 42 s. 10.

Plea of Nonjoinder of Defendant.

14. No plea in abatement for the nonjoinder of any person as a co-defendant shall be allowed in any action unless it be stated in the plea that such person is resident within the jurisdiction of the court and unless the place of his residence be stated with convenient certainty in an affidavit verifying such plea and to any such plea in abatement the plaintiff may reply that such person has been discharged by bankruptcy insolvency and certificate under any Act passed or to be passed in that behalf.

Plea in abatement for nonjoinder and replication thereto.
4 Vic. No. 6 s. 20.
1 Pring 7.
3 & 4 Wm. IV. c. 42 ss. 8 and 9.

15. If any defendant or defendants in any action on any simple contract shall plead any matter in abatement to the effect that any other person or persons ought to be jointly sued and issue be joined on such plea and it shall appear at the trial that the action could not by reason of any statute of limitations be maintained against the other person or persons named in such plea or any of them the issue joined on such plea shall be found against the party pleading the same.

Issues on pleas in abatement.
9 Geo. IV. c. 14. s. 2.
1 Pring 473.

Death Marriage and Insolvency of Parties.

16. The death of a plaintiff or defendant shall not cause the action to abate but it may be continued as hereinafter mentioned.

Action not to abate by death.
17 Vic. No. 21 s. 108.
2 Pring 1627.
15 & 16 Vic. c. 76 s. 135.

17. If there be two or more plaintiffs or defendants and one or more of them shall die and the cause of such action shall survive to the surviving plaintiff or plaintiffs or against the surviving defendant or defendants the action shall not be thereby abated but such death being suggested upon the record the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Proceeding in case of death of one or more of several plaintiffs or defendants.
17 Vic. No. 21 s. 109.
2 Pring 1627.
15 & 16 Vic. c. 76 s. 136.

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Proceedings in case of sole plaintiff.

17 Vic. No. 21 s. 110.

2 Pring 1627.

15 & 16 Vic. c. 76 s. 137.

18. In case of the death of a sole plaintiff or sole surviving plaintiff the legal representative of such plaintiff may by leave of the court or a judge enter a suggestion of the death and that he is such legal representative and the action shall thereupon proceed and if such suggestion be made before the trial the truth of the suggestion shall be tried thereat together with the title of the deceased plaintiff and such judgment shall follow upon the verdict in favor of or against the person making such suggestion as if such person were originally the plaintiff.

Proceedings upon death of sole defendant or sole surviving defendant.

17 Vic. No. 21 s. 111.

2 Pring 1627.

15 & 16 Vic. c. 76 s. 138.

19. In case of the death of the sole defendant or sole surviving defendant where the action survives the plaintiff may make a suggestion either in any of the pleadings if the cause has not arrived at issue or in a copy of the issue if it has so arrived of the death and that a person named therein is the executor or administrator of the deceased and may thereupon serve such executor or administrator with a copy of the writ and suggestion and with a notice signed by the plaintiff or his attorney requiring such executor or administrator to appear within eight days after service of the notice inclusive of the day of such service and that in default of his so doing the plaintiff may sign judgment against him as such executor or administrator and the same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which the action was brought and in case no pleadings have taken place before the death the suggestion shall form part of the declaration and the declaration and suggestion may be served together and the new defendant shall plead thereto at the same time and in case the plaintiff shall have declared but the defendant shall not have pleaded before the death the new defendant shall plead at the same time to the declaration and suggestion and in case the defendant shall have pleaded before the death the new defendant shall be at liberty to plead to the suggestion only by way of denial or such plea as may be appropriate to and rendered necessary by his character of executor or administrator unless by leave of the court or a judge he should be permitted to plead fresh matter in answer to the declaration and in case the defendant shall have pleaded before the death but the pleadings shall not have arrived at issue the new defendant besides pleading to the suggestion shall continue the pleadings to issue in the same manner as the deceased might have done and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together and in case the plaintiff shall recover he shall be entitled to the like judgment in respect of the debt or sum sought to be recovered and in respect of the costs prior to the suggestion and in respect of the costs of the suggestion and subsequent thereto he shall be entitled to the like judgment as in an action originally commenced against the executor or administrator.

To compel continuance or abandonment of action in case of death.

20 Vic. No. 31 s. 56.

2 Pring 1654.

17 & 18 Vic. c. 125 s. 92.

20. Where an action would but for the provisions of this Act have abated by reason of the death of either party and in which the proceedings may be revived and continued under this Act the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff

or

or person entitled to proceed with the action in the room of 31 VICTORIA No. 14. the plaintiff to proceed according to the provisions of this Act within such time as the judge shall order and in default of such proceeding the defendant or other person against whom the action may be so continued as aforesaid shall be entitled to enter a suggestion of such default and of the representative character of the person by or against whom the action may be proceeded with as the case may be and to have judgment for the costs of the action and suggestion against the plaintiff or against the person entitled to proceed in his room as the case may be and in the latter case to be levied of the goods of the testator or intestate.

21. The death of either party between the verdict and the judgment shall not prejudice the judgment so as such judgment be entered within two terms after such verdict.

Death between verdict and judgment.

20 Vic. No. 21 s. 112.

2 Pring 1628.

15 & 16 Vic. c. 76

s. 139.

22. If the plaintiff in any action happen to die after an interlocutory judgment and before a final judgment obtained therein the said action shall not abate by reason thereof if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff and if the defendant die after such an interlocutory judgment and before final judgment therein obtained the said action shall not abate if such action might be originally prosecuted or maintained against the executor or administrator of such defendant and the plaintiff or if he be dead after such interlocutory judgment his executors or administrators shall and may have a writ of revivor in the form contained in the schedule appended to this Act number three or to the like effect against the defendant if living after such interlocutory judgment or if he be dead then against his executors or administrators to show cause why damages in such action should not be assessed and recovered by him or them and if such defendant his executors or administrators shall appear at the return of such writ and not show or allege any matter sufficient to arrest the final judgment or shall make default a writ of or other inquiry of damages shall be thereupon awarded or the amount for which final judgment is to be signed shall be referred to the prothonotary as is or may be by law provided and upon the return of the writ or inquiry or delivery of the order with the amount indorsed thereon to the plaintiff his executors or administrators judgment final shall be given for the said plaintiff his executors or administrators prosecuting such writ of revivor against such defendant his executors or administrators respectively.

Proceedings in case of death after interlocutory and before final judgment.

17 Vic. No. 21 s. 113.

2 Pring 1628.

15 & 16 Vic. c. 76

s. 140.

Marriage of Parties.

23. The marriage of a woman plaintiff or defendant shall not cause the action to abate but the action may notwithstanding be proceeded with to judgment and such judgment may be executed against the wife alone or by suggestion or writ of revivor pursuant to this Act judgment may be obtained against the husband and wife and execution issue thereon and in case of a judgment for the wife execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion and if in any such action the wife shall sue or defend by attorney appointed by her when sole such attorney shall have authority to continue the action or defence unless

Marriage not to abate action.

17 Vic. No. 21 s. 114.

2 Pring 1628.

15 & 16 Vic. c. 76

s. 111.

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Bankruptcy or Insolvency of Parties.

Bankruptcy and insolvency of plaintiff when not to abate action.

17 Vic. No. 21 s. 115.
2 Pring 1629.
15 & 16 Vic. c. 76 s. 112.

24. The bankruptcy or insolvency of the plaintiff in any action which the assignees might maintain for the benefit of the creditors shall not be pleaded in bar to such action unless the assignees shall decline to continue it and give security for the costs thereof upon a judge's summons for that purpose within such reasonable time as the judge may order but the proceedings may be stayed until such election is made and in case the assignees neglect or refuse to continue the action and give such security within the time limited by the order the defendant may within eight days after such neglect or refusal plead the bankruptcy or insolvency.

Revocation of Administration.

Revocation of temporary grants not to prejudice actions or suits.

20 & 21 Vic. c. 77 s. 76.

25. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration and of the grant of probate or administration which shall have been made thereupon and that the proceedings shall be continued in the name of the new executor or administrator in like manner as if the proceeding had been originally commenced by or against such new executor or administrator but subject to such conditions and variations if any as such court may direct.

Revival of Judgments.

Execution in six years without revival.

17 Vic. No. 21 s. 101.
2 Pring 1626.
15 & 16 Vic. c. 76 s. 128.

26. During the lives of the parties to a judgment or those of them during whose lives execution may at present issue within a year and a day without a *scire facias* and within six years from the recovery of the judgment execution may issue without a revival of the judgment.

Judgment to be revived by writ or with leave of court or judge by suggestion.

17 Vic. No. 21 s. 102.
2 Pring 1626.
15 & 16 Vic. c. 76 s. 129.

27. In cases where it shall become necessary to revive a judgment by reason either of lapse of time or of a change by death or otherwise of the parties entitled or liable to execution the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned or apply to the court or a judge for leave to enter a suggestion upon the roll to the effect that it manifestly appears to the court that such party is entitled to have execution of the judgment and to issue execution thereupon such leave to be granted by the court or a judge upon a rule to show cause or a summons to be served according to the present practice or in such other manner as such court or judge may direct and which rule or summons may be in the form contained in the aforesaid schedule number one or to the like effect.

Proceedings upon application for suggestion to revive judgment.

17 Vic. No. 21 s. 103.
2 Pring 1626.
15 & 16 Vic. c. 76 s. 130.

28. Upon such application in case it manifestly appears that the party making the same is entitled to execution the court or judge shall allow such suggestion as aforesaid to be entered in the form contained in the said schedule number two or to the like effect and execution to issue thereupon and shall order whether or not the costs of such application shall be paid to the party making the same and in case it does not manifestly so appear the court or judge shall discharge the

the rule or dismiss the summons with or without costs. Provided nevertheless that in such last-mentioned case the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment. 31 VICTORIA No. 11.

29. The writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded and shall bear teste on the day of its issuing and after reciting the reason why such writ has become necessary it shall call upon the party to whom it is directed to appear within eight days after service thereof to show cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed and it shall give notice that in default of appearance the party issuing such writ may proceed to execution and such writ may be in the form contained in the said schedule number three or to the like effect and may be served and otherwise proceeded upon whether in term or vacation in the same manner as a writ of summons and the venue in a declaration upon such writ may be laid in any district and the pleadings and proceedings thereupon and the rights of the parties respectively to costs shall be the same as in an ordinary action. Writ of revivor and proceedings thereon. 17 Vic. No. 21 s. 104. 2 Pring 1626. 15 & 16 Vic. c. 76. s. 131.

30. All writs of *scire facias* issued against bail on a recognizance against members of a joint stock company or other body upon a judgment recorded against a public officer or other person sued as representing such company or body or against such company or body itself by or against a husband to have execution of a judgment for or against a wife or upon a suggestion of further breaches after judgment for any penal sum pursuant to the *Pleading Act of 1867* shall be tested directed and proceeded upon in like manner as writs of revivor. Writs of *scire facias* in other cases to be tested directed and proceeded upon in like manner. 17 Vic. No. 21 s. 105. 2 Pring 1627.

31. Notice in writing to the plaintiff his attorney or agent shall be sufficient appearance to a writ of revivor. Appearance to writ of revivor. 17 Vic. No. 21 s. 106. 2 Pring 1627.

32. A writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order if more than ten years old not without a rule of court or a judge's order nor if more than fifteen without a rule to show cause. As to issue of writ of revivor upon judgment less or more than ten or more than fifteen years old. 17 Vic. No. 21 s. 107. 2 Pring 1627.

33. Proceedings against executors upon a judgment of assets *in futuro* may be had and taken in the manner provided by this Act as to writs of revivor. *Scire facias* on judgment of assets *in futuro*. 20 Vic. No. 31 s. 55. 2 Pring 1654.

Powers of the Court.

34. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper. Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof. General rules may be made by the judges. 17 Vic. No. 21 s. 174. 1 Pring 1638. 15 & 16 Vic. c. 76 s. 223. 27 Vic. No. 14 s. 20. 3 Pring 316.

31 VICTORIA No. 14. thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

Commencement and Short Title.

Commencement of 35. This Act shall commence on the thirty-first day of
Act. December one thousand eight hundred and sixty-seven and may be
Short title. referred to as the "*Joinder and Revivor Act of 1867.*"

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

NUMBER ONE.

Form of Rule or Summons where a Judgment Creditor applies for Execution against a Judgment Debtor.

[*Formal parts as at present.*]

17 Vic. No. 21
schedule No. 7.
2 Pring 1641.
Section 27.

C.D. show cause why A.B. [or as the case may be] should not be at liberty to enter a suggestion upon the roll in an action wherein the said A.B. was plaintiff and the said C.D. was defendant and wherein the said A.B. obtained judgment for pounds against the said C. D. on the day of that it manifestly appears to the court that the said A. B. is entitled to have execution of the said judgment and to issue execution thereupon and why the said C. D. should not pay to the said A.B. the costs of this application to be taxed.

[NOTE.—*The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*]

NUMBER TWO.

Form of Suggestion that the Judgment Creditor is entitled to Execution against the Judgment Debtor.

17 Vic. No. 21
schedule No. 8.
2 Pring 1612.
Section 23.

And now on the day of it is suggested and manifestly appears to the court that the said A.B. [or C. D. as executor of the last will and testament of the said A. B. deceased or as the case may be] is entitled to have execution of the judgment aforesaid against the said E. F. [or against G. H. as executor of the last will and testament of the said E. F. or as the case may be] therefore it is considered by the court that the said A. B. [or C. D. as such executor as aforesaid or as the case may be] ought to have execution of the said judgment against the said E. F. [or against G. H. as such executor as aforesaid or as the case may be.]

NUMBER THREE.

Form of Writ of Revivor.

17 Vic. No. 21
schedule No. 9.
2 Pring 1642.
Sections 22 and 29.

Victoria by the grace of God [et cetera] to E. F. of greeting.
We command you that within eight days after the service of this writ upon you inclusive of the day of such service you appear in our Supreme Court of Queensland to show cause why A. B. [or C. D. as executor of the last will and testament of the said A. B. deceased or as the case may be] should not have execution against you [if against a representative here insert as executor of the last will and testament of deceased or as the case may be] of a judgment whereby the said A. B. [or as the case may be] on the day of in the said court recovered against you [or as the case may be] pounds and take notice that in default of your so doing the said A. B. [or as the case may be] may proceed to execution.

Witness the Honorable [name] Our Chief Justice [et cetera].

An Act to Consolidate and Amend the Laws relating to Pleading in Actions at Law.

31 VICTORIA No. 5.

[26th November, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to pleading in actions at law Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Determination of Questions without Pleading.

1. Where the parties to an action are agreed as to the questions of fact to be decided between them they may after writ issued and before judgment by consent and order of a judge (which order any judge shall have power to make upon being satisfied that the parties have a *bona fide* interest in the decision of such questions and that the same are fit to be tried) proceed to the trial of any questions of fact without formal pleadings and such questions may be stated for trial in an issue in the form contained in the schedule A to this Act annexed and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the court as in other actions. Questions of fact may after writ issued by consent and leave of the judge be raised without pleadings. 17 Vic. No. 21 s. 38. 2 Pring 1618. 15 & 16 Vic. c. 76 s. 42.
2. The parties may if they think fit enter into an agreement in writing which shall be embodied in the said or any subsequent order that upon the finding of the jury in the affirmative or negative of such issue a sum of money fixed by the parties or to be ascertained by the jury upon a question inserted in the issue for that purpose shall be paid by one of such parties to the other of them either with or without the costs of the action. Agreement may be entered into for the payment of money and costs according to the result of the issue. 17 Vic. No. 21 s. 39. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 43.
3. Upon the finding of the jury in any such issue judgment may be entered for such sum as shall be so agreed or ascertained as aforesaid with or without costs as the case may be and execution may issue upon such judgment forthwith unless otherwise agreed or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity or moving to set aside the verdict or for a new trial. Judgment to be entered according to the agreement and execution issued forthwith unless stayed. 17 Vic. No. 21 s. 40. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 41.
4. The proceedings upon such issue may be recorded at the instance of either party and the judgment whether actually recorded or not shall have the same effect as any other judgment in a contested action. Proceedings upon issue may be recorded. 17 Vic. No. 21 s. 41. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 45.
5. The parties may after writ issued and before judgment by consent and order of a judge state any question or questions of law in a special case for the opinion of the court without any pleadings. Questions of law may be raised after writ issued by consent &c. without pleading. 17 Vic. No. 21 s. 42. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 46.
6. The parties may if they think fit enter into an agreement in writing which shall be embodied in the said or any subsequent order that upon the judgment of the court being given in the affirmative or negative of the question or questions of law raised by such special case a sum of money fixed by the parties or to be ascertained by the court or in such manner as the court may direct shall be paid by one of such parties to the other. Agreement as to payment of money and costs according to the result of the issue. 17 Vic. No. 21 s. 43. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 47.

31 VICTORIA No. 5. other of them either with or without costs of the action and the judgment of the court may be entered for such sum as shall be so agreed or ascertained with or without costs as the case may be and execution may issue upon such judgment forthwith unless otherwise agreed or unless stayed by proceedings in appeal.

to judgment upon special case.

17 Vic. No. 21 s. 43.
2 Pring 1619.

15 & 16 Vic. c. 76 s. 47.

Costs to follow the event.

17 Vic. No. 21 s. 44.
2 Pring 1619.

15 & 16 Vic. c. 76 s. 48.

Pleadings to be dated and entered as of time of pleading unless order to the contrary.

17 Vic. No. 21 s. 49.
2 Pring 1620.

15 & 16 Vic. c. 76 s. 54.

Fictitious and needless averments not to be made.

17 Vic. No. 21 s. 45.
2 Pring 1619.

15 & 16 Vic. c. 76 s. 49.

Profert and oyer abolished.

17 Vic. No. 21 s. 50.
2 Pring 1620.

15 & 16 Vic. c. 76 s. 55.

Performance of conditions precedent may be averred generally.

17 Vic. No. 21 s. 52.
2 Pring 1620.

15 & 16 Vic. c. 76 s. 57.

Document may be set forth and be considered a part of the pleading in which it is set forth.

17 Vic. No. 21 s. 51.
2 Pring 1620.

15 & 16 Vic. c. 76.

Payment set-off and other pleadings which can be construed distributively shall be so construed.

17 Vic. No. 21 s. 69.
2 Pring 1622.

15 & 16 Vic. c. 76 s. 75.

Judgment upon demurrer to be given according to the very right of the cause.

17 Vic. No. 21 s. 46.
2 Pring 1619.

15 & 16 Vic. c. 76 s. 50.

7. In case no agreement shall be entered into as to the costs of such action the costs shall follow the event and be recovered by the successful party.

Matter and Form of Pleadings in General.

8. Every declaration and other pleading shall be entitled of the Supreme Court and of the day of the month and the year when the same was pleaded and shall bear no other time or date and every declaration and other pleading shall also be entered on the record under the date of the day of the month and year when the same respectively took place and without reference to any other time or date unless otherwise specially ordered by the court or a judge.

9. All statements which need not be proved such as the statement of time quantity quality and value where these are immaterial the statement of losing and finding and bailment in actions for goods or their value the statement of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen the statement of promises which need not be proved as promises in *indebitatus* counts and mutual promises to perform agreements and all statements of a like kind shall be omitted.

10. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading and if profert shall be made it shall not entitle the opposite party to crave oyer of or set out upon oyer such deed or other document.

11. It shall be lawful for the plaintiff or defendant in any action to aver performance of conditions precedent generally and the opposite party shall not deny such averment generally but shall specify in his pleading the condition or conditions precedent the performance of which he intends to contest.

12. A party pleading in answer to any pleading in which any document is mentioned or referred to shall be at liberty to set out the whole or such part thereof as may be material and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out.

13. Pleas of payment and set-off and all other pleadings capable of being construed distributively shall be taken distributively and if issue is taken thereon and so much thereof as shall be sufficient answer to part of the causes of action proved shall be found true by the jury a verdict shall pass for the defendant in respect of so much of the causes of action as shall be answered and for the plaintiff in respect of so much of the causes of action as shall not be so answered.

Demurrer and Joinder and Objection to Pleadings.

14. Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action defence or reply as the case may be and where issue is joined on such demurrer the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto

unto them without regarding any imperfection omission defect in or lack of form and no judgment shall be arrested stayed or reversed for any such imperfection omission defect in or lack of form. 31 VICTORIA No. 5.

15. No pleading shall be deemed insufficient for any defect which could only be objected to by special demurrer. Objections by way of special demurrer taken away.

16. The form of a demurrer except in the cases herein specifically provided for shall be as follows or to the like effect— 17 Vic. No. 21 s. 47. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 51.

“The defendant [or plaintiff] by his attorney [or in person] says that the declaration [or plea *et cetera*] is bad in substance” Form of demurrer and joinder in demurrer.

And in the margin thereof some substantial matter of law intended to be argued shall be stated and if any demurrer shall be delivered without such statement or with a frivolous statement it may be set aside by the court or a judge and leave may be given to sign judgment as for want of a plea and the form of a joinder in demurrer shall be as follows or to the like effect— 17 Vic. No. 21 s. 82. 2 Pring 1623. 15 & 16 Vic. c. 76 s. 89.

“The plaintiff [or defendant] says that the declaration [or plea *et cetera*] is good in substance.”

17. If any pleading be so framed as to prejudice embarrass or delay the fair trial of the action the opposite party may apply to the court or a judge to strike out or amend such pleading and the court or any judge shall make such order respecting the same and also respecting the costs of the application as such court or judge shall see fit. Pleadings framed to embarrass may be struck out or amended. 17 Vic. No. 21 s. 48. 2 Pring 1619. 15 & 16 Vic. c. 76 s. 52.

18. And whereas certain causes of action may be considered to partake of the character both of breaches of contract and of wrongs and doubts may arise as to the form of pleas in such actions and it is expedient to preclude such doubts Any plea which shall be good in substance shall not be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong. Pleas to actions partaking both of breach of contract and wrong. 17 Vic. No. 21 s. 68. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 74.

Arrest of Judgment and Judgment non obstante veredicto.

19. Upon any motion made in arrest of judgment or to enter an arrest of judgment or for judgment *non obstante veredicto* by reason of the non-averment of some fact or matter or other cause the party whose pleading is alleged or adjudged to be therein defective may by leave of the court suggest the existence of the omitted fact or matter or that it was proved at the trial of the cause and such suggestion may be pleaded to by the opposite party within eight days after notice thereof or such further time as the court or a judge may allow and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action Provided that in cases in which the suggestion shall be that the omitted fact or matter was proved at the trial if the judge before whom the cause was tried shall certify that such proof was given to his satisfaction such certificate shall be conclusive upon the parties and judgment shall be given in accordance therewith. Upon motion in arrest of judgment omitted facts may be leave of the court be suggested. 17 Vic. No. 21 s. 116. 2 Pring 1629. 15 & 16 Vic. c. 76 s. 113.

20. If the fact or matter suggested be admitted or found to be true the party suggesting shall be entitled to such judgment as he would have been entitled to if such fact or matter had been originally stated in pleading and proved or admitted on the trial together with the costs of and occasioned by the suggestion and proceedings thereon but if such fact or facts be found untrue the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon in addition to any other costs to which he may be entitled. Judgment to follow result of suggestion. 17 Vic. No. 21 s. 117. 2 Pring 1629. 15 & 16 Vic. c. 76 s. 144.

21. Upon

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Costs of abortive issues.

17 Vic. No. 21 s. 118.

20 Pring 162.

15 & 16 Vic. c. 76 s. 145.

21. Upon an arrest of judgment or judgment *non obstante veredicto* the court shall adjudge to the party against whom such judgment is given the costs occasioned by the trial of any issues of fact arising out of the pleading for defect of which such judgment is given upon which such party shall have succeeded and such costs shall be set off against any money or costs adjudged to the opposite party and execution may issue for the balance if any.

Declaration.

Forms of commencement &c. of declaration.

17 Vic. No. 21 s. 54.

2 Pring 1620.

15 & 16 Vic. c. 76 s. 59.

22. Every declaration shall commence as follows or to the like effect—

[Venue] “A. B. by E. F. his attorney [or *as the case may be*] sues C. D. for”
[here state the cause of action]

And shall conclude as follows or to the like effect—

“And the plaintiff claims £ [or if the action is brought to recover specific goods the plaintiff claims a return of the said goods or their value and £ for their detention.”]

Commencement of declaration after plea of nonjoinder.

17 Vic. No. 21 s. 55.

2 Pring 1620.

15 & 16 Vic. c. 76 s. 60.

23. In all cases in which after a plea in abatement of the nonjoinder of another person as defendant the plaintiff shall without having proceeded to trial on an issue thereon commence another action against the defendant in the action in which such plea in abatement shall have been pleaded and the person named in such plea in abatement as joint contractor or shall amend by adding the omitted defendant the commencement of the declaration shall be in the following form or to the like effect—

[Venue] “A. B. by E. F. his attorney [or in his own proper person *et cetera*] sues C. D. and G. H. which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H. for” *et cetera*.

In actions on bonds &c. plaintiff may assign as many breaches as he pleases.
8 & 9 Wm. 111. c. 11 s. 8.

24. In all actions which shall be commenced or prosecuted in the Supreme Court upon any covenants or agreements in any indenture deed or writing contained the plaintiff or plaintiffs may assign as many breaches as he or they shall think fit and the jury upon trial of such action or actions shall and may assess not only such damages and costs of suit as have aforesaid been usually done in such cases but also damages for such of the said breaches so to be assigned as the plaintiff upon the trial of the issues shall prove to have been broken and that the like judgment shall be entered on such verdict as heretofore hath been usually done in such like actions and if judgment shall be given for the plaintiff on a demurrer or by confession or *nihil dicit* the plaintiff upon the roll may suggest as many breaches of the covenants and agreements as he shall think fit upon which shall issue a writ to the sheriff to summon a jury to appear before the justices or justice of assize or *nisi prius* to inquire of the truth of every one of those breaches and to assess the damages that the plaintiff shall have sustained thereby in which writ it shall be commanded to the said justices or justice of assize or *nisi prius* that he or they shall make a return thereof to the court at the time in such writ mentioned and in case the defendant or defendants after such judgment entered and before any execution executed shall pay into the court where the action shall be brought to the use of the plaintiff or plaintiffs or his or their executors or administrators such damages so to be assessed by reason of all or any of the breaches of such covenants together with the costs of suit a stay of execution of the said judgment shall be entered upon record or if by reason of

Jury may assess damages.

Defendant paying damages execution may be stayed.

of any execution executed the plaintiff or plaintiffs or his or their executors or administrators shall be fully paid or satisfied all such damages so to be assessed together with his or their costs of suit and all reasonable charges and expenses for executing the said execution the body lands or goods of the defendant shall be thereupon forthwith discharged from the said execution which shall likewise be entered upon record but notwithstanding in each case such judgment shall remain continue and be as a further security to answer to the plaintiff or plaintiffs and his or their executors or administrators such damages as shall or may be sustained for further breach of any covenant or covenants in the same indenture deed or writing contained upon which the plaintiff or plaintiffs may have a *feri facias* upon the said judgment against the defendant or against his heir terre-tenants or his executors or administrators suggesting other breaches of the said covenants or agreements and to summon him or them respectively to show cause why execution shall not be had or awarded upon the said judgment upon which there shall be the like proceeding as was in the action of debt upon the said bond of obligation for assessing of damages upon trial of issues joined upon such breaches or inquiry thereof upon a writ to be awarded in manner aforesaid and that upon payment or satisfaction in manner as aforesaid of such future damages costs and charges as aforesaid all further proceedings on the said judgment are again to be stayed and so *toties quoties* and the defendant his body lands or goods shall be discharged out of execution as aforesaid.

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But judgment to remain to answer any further breach.

And plaintiff may have a *feri facias* against the defendant.

25. In actions of libel and slander the plaintiff shall be at liberty to aver that the words or matter complained of were used in a defamatory sense specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense and such averment shall be put in issue by the denial of the alleged libel or slander and where the words or matter set forth with or without the alleged meaning show a cause of action the declaration shall be sufficient.

Declaration for libel or slander.
17 Vic. No. 21 s. 56.
2 Pring 1620.
15 & 16 Vic. c. 76 s. 61.

New Assignment.

26. One new assignment only shall be pleaded to any number of pleas to the same cause of action and such new assignment shall be consistent with and confined by the particulars delivered in the action if any and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify or for an excess over and above what all the defences set up in such pleas justify or both.

One new assignment only allowed in respect of the same cause of action.
17 Vic. No. 21 s. 80.
2 Pring 1623.
15 & 16 Vic. c. 76 s. 87.

27. No plea which has already been pleaded to the declaration shall be pleaded to such new assignment except a plea in denial unless by leave of the court or a judge and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits.

Pleas not to be repeated.
17 Vic. No. 21 s. 81.
2 Pring 1623.
15 & 16 Vic. c. 76 s. 88.

Plea and subsequent Pleadings.

28. Express color shall no longer be necessary in any pleading.

Express color abolished.
17 Vic. No. 21 s. 58.
2 Pring 1620.
15 & 16 Vic. c. 76 s. 61.

29. Special traverses shall not be necessary in any pleading.

Special traverses abolished.
17 Vic. No. 21 s. 59.
2 Pring 1621.
15 & 16 Vic. c. 76 s. 65.

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Signature of counsel.

17 Vic. No. 21 s. 78.

2 Pring 1623.

15 & 16 Vic. c. 76
s. 85.Formal commence-
ment and prayer of
judgment unneces-
sary.

17 Vic. No. 21 s. 60.

2 Pring 1621.

15 & 16 Vic. c. 76
s. 65.Commencement of
plea.

17 Vic. No. 21 s. 61.

2 Pring 1621.

15 & 16 Vic. c. 76
s. 67.

30. The signature of counsel shall not be required to any pleading.

31. In a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non* or to the like effect or any prayer of judgment nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non* or to the like effect or any prayer of judgment.

32. No formal defence shall be required in a plea or avowry or cognizance and it shall commence as follows or to the like effect—

“The defendant by his attorney [or in person or as the case may be] says that” [here state first defence]

and it shall not be necessary to state in a second or other plea or avowry or cognizance that it is pleaded by leave of the court or a judge or according to the form of the statute or to that effect but every such plea avowry or cognizance shall be written in a separate paragraph and numbered and shall commence as follows or to the like effect—

“And for a second [et cetera] plea the defendant says that [here state second et cetera defence]”

or if pleaded to part only then as follows or to the like effect—

“And for a second [et cetera] plea to [stating to what it is pleaded] the defendant says that” [et cetera]

And no formal conclusion shall be necessary to any plea avowry cognizance or subsequent pleading.

Several Pleadings.

Certain pleas may be
pleaded together with-
out leave.

17 Vic. No. 21 s. 77.

2 Pring 1623.

15 & 16 Vic. c. 76
s. 84.

33. The following pleas or any two or more of them may be pleaded together as of course without leave of the court or a judge that is to say a plea denying any contract or debt alleged in the declaration a plea of tender as to part a plea of the statute of limitations set-off bankruptcy of the defendant discharge under an Insolvent Act *plene administravit plene administravit præter* infancy coverture payment accord and satisfaction release not guilty a denial that the property an injury to which is complained of is the plaintiff's leave and license *son assault demesne* and any other pleas which the judges of the Supreme Court shall by any rule or order made as hereinafter mentioned from time to time order or direct.

For pleading several
matters without leave
judgment may be
signed.

17 Vic. No. 21 s. 79.

2 Pring 1623.

15 & 16 Vic. c. 76
s. 86.

34. Except in the cases herein specifically provided for if either party plead several pleas replications avowries cognizances or other pleadings without leave of the court or a judge the opposite party shall be at liberty to sign judgment provided that such judgment may be set aside by the court or a judge upon an affidavit of merits and such terms as to costs and otherwise as they or he may think fit.

As to pleading and
demurring together.

17 Vic. No. 21 s. 74.

2 Pring 1622.

15 & 16 Vic. c. 76
s. 80.

35. Either party may by leave of the court or a judge plead and demur to the same pleading at the same time upon an affidavit by such party or his attorney if required by the court or judge to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact and that he is further advised and believes that the objections raised by such demurrer are good and valid objections

objections in law and it shall be in the discretion of the court or a judge to direct which issues shall be first disposed of. 31 VICTORIA No. 5.

36. The plaintiff in any action may by leave of the court or a judge plead in answer to the plea or the subsequent pleading of the defendant as many several matters as he shall think necessary to sustain his action and the defendant in any action may by leave of the court or a judge plead in answer to the declaration or other subsequent pleading of the plaintiff as many several matters as he shall think necessary for his defence upon an affidavit of the party making such application or his attorney if required by the court or judge to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact. Provided that the costs of any issue either of fact or law shall follow the finding or judgment upon such issue and be adjudged to the successful party whatever may be the result of the other issue or issues. Several matters may be pleaded at any stage of the pleadings. 17 Vic. No. 21 s. 75. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 81.

Summons to Plead Several Matters.

37. All objections to the pleading of several pleas replications or subsequent pleadings or several avowries or cognizances on the ground that they are founded on the same ground of answer or defence shall be heard upon the summons to plead several matters. Objections to pleadings to be heard on summons to plead several matters. 17 Vic. No. 21 s. 76. 2 Pring 1623. 15 & 16 Vic. c. 76 s. 83.

Traverse.

38. A defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea or may select and traverse separately any material allegation in the declaration although it might have been included in a general traverse. Traverse of the declaration. 17 Vic. No. 21 s. 70. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 76.

39. A plaintiff shall be at liberty to traverse the whole of any plea or subsequent pleading of the defendant by a general denial or admitting some part or parts thereof to deny all the rest or to deny any one or more allegations. Traverse of plea or subsequent pleading of defendant. 17 Vic. No. 21 s. 71. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 77.

40. A defendant shall be at liberty in like manner to deny the whole or part of a replication or subsequent pleading of the plaintiff. Traverse of replication or subsequent pleading of the plaintiff. 17 Vic. No. 21 s. 72. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 78.

41. So much of any clause or provision in any Act or Acts commonly called public local and personal or local and personal or in any Act or Acts of a local and personal nature whereby any party or parties are entitled or permitted to plead the general issue only and to give any special matter in evidence without specially pleading the same shall be and the same is hereby repealed. General issue by statute. 5 & 6 Vic. c. 97 s. 3.

Joinder of Issue.

42. Either party may plead in answer to the plea or subsequent pleading of his adversary that he joins issue thereon which joinder of issue may be as follows or to the like effect— Joinder of issue. 17 Vic. No. 21 s. 73. 2 Pring 1622. 15 & 16 Vic. c. 76 s. 79.

“The plaintiff joins issue upon the defendant's first [*et cetera specifying what or what part*] plea” “The defendant joins issue upon the plaintiff's replication to the first [*et cetera specifying what*] plea”

and such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading and an issue thereon and in all cases where the plaintiff's pleading is in denial of the pleading of the defendant or some part of it the plaintiff may add a joinder of issue for the defendant.

Payment

31 VICTORIA No. 5.

Payment.

Action of debt being brought on judgment after money paid such payment may be pleaded in bar the like in bonds.
4 & 5 Anne c. 16 s. 12.

43. When any action of debt or *scire facias* shall be brought upon any judgment if the defendant hath paid the money due upon such judgment such payment shall and may be pleaded in bar of such action or suit and where an action of debt is brought upon any bond which hath a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain if the obligor his heirs executors or administrators have before the action brought paid to the obligee his executors or administrators the principal and interest due by the defeasance or condition of such bond though such payment was not made strictly according to the condition or defeasance yet it shall and may nevertheless be pleaded in bar of such action and shall be as effectual a bar thereof as if the money had been paid at the day and place according to the condition or defeasance and had been so pleaded.

Payment into Court.

Principal and interest on bonds payable into court.
4 & 5 Anne c. 16 s. 13.

44. If at any time pending an action upon any such bond with a penalty the defendant shall bring into court all the principal money and interest due on such bond and also all such costs as have been expended in any suit or suits in law or equity upon such bond the said money so brought in shall be deemed and taken to be in full satisfaction and discharge of the said bond and court shall and may give judgment to discharge every such defendant of and from the same accordingly.

Payment into court in certain actions.
17 Vic. No. 21 s. 61.
2 Pring 1621.
15 & 16 Vic. c. 76 s. 70.

45. It shall be lawful for the defendant in all actions (except actions for libel malicious arrest or prosecution criminal conversation or debauching of the plaintiff's daughter or servant) and by leave of the court or a judge upon such terms as they or he may think fit for one or more of several defendants to pay into court a sum of money by way of compensation or amends.

Payment into court in replevin.
26 Vic. No. 7 s. 18.
2 Pring 1657.
23 & 24 Vic. c. 126 s. 23.

46. The plaintiff in replevin may in answer to an avowry pay money into court in satisfaction in like manner and subject to the same proceedings as to costs and otherwise as upon a payment into court by a defendant in other actions.

Effect of such payment in replevin.
26 Vic. No. 7 s. 19.
2 Pring 1657.
23 & 24 Vic. c. 126 s. 24.

47. Such payment into court in replevin shall not nor shall the acceptance thereof by the defendant in satisfaction work a forfeiture of the replevin bond.

Payment into court in action on money bond and for detainer.
26 Vic. No. 7 s. 20.
2 Pring 1657.
23 & 24 Vic. c. 126 s. 25.

48. In any action brought upon a bond which has a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain with a penalty and in any action for detaining the goods of the plaintiff it shall be lawful for the defendant by leave of the court or a judge upon such terms as they or he shall think fit to pay into court a sum of money to answer the claim of the plaintiff in respect of such bond in the former case and in the latter case to the value of the goods alleged to be detained.

Payment into court how pleaded.
17 Vic. No. 21 s. 65.
2 Pring 1621.
15 & 16 Vic. c. 76 s. 71.

49. When money is paid into court such payment shall be pleaded in all cases as near as may be in the following form *mutatis mutandis*—

“The defendant by his attorney [or in person *et cetera*] [if pleaded to part say as to £ parcel of the money claimed] brings into court the sum of £ and says that the said sum is enough to satisfy the claim of the plaintiff in respect of the matter herein pleaded to.”

50. No rule or judge's order to pay money into court shall be necessary except in the case of one or more of several defendants but the money shall be paid to the proper officer of the court who shall give a receipt for the amount in the margin of the plea and the said sum shall be paid out to the plaintiff or to his attorney upon a written authority from the plaintiff on demand.

31 VICTORIA No. 5.
No order to pay money into court.
17 Vic. No. 21 s. 66.
2 Pring 1621.
15 & 16 Vic. c. 76 s. 72.

51. The plaintiff after the delivery of a plea of payment of money into court shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in and he shall be at liberty in that case to tax his costs of suit and in case of non-payment thereof within forty-eight hours to sign judgment for his costs of suit so taxed or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded and in the event of an issue thereon being found for the defendant the defendant shall be entitled to judgment and his costs of suit from the time of such plea.

Proceedings by plaintiff after payment into court.
17 Vic. No. 21 s. 67.
2 Pring 1622.
15 & 16 Vic. c. 76 s. 73.

52. In any action for defamation it shall be lawful for the defendant (after notice in writing of his intention so to do duly given to the plaintiff at the time of filing or delivering the plea in such action) to give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for such defamation before the commencement of the action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

Offer of an apology admissible in evidence in mitigation of damages.
11 Vic. No. 13 s. 3.
1 Pring 479.
6 & 7 Vic. c. 96 s. 1.

53. In an action for a libel contained in any public newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice and without gross negligence and that before the commencement of the action or at the earliest opportunity afterwards he inserted in such newspaper or other periodical publication a full apology for the said libel or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week had offered to publish the said apology in any newspaper or periodical publication to be selected by the plaintiff in such action and every such defendant shall upon pleading such plea be at liberty to pay into court a sum of money by way of amends for the injury sustained by the publication of such libel and such payment into court shall be of the same effect and be available in the same manner and to the same extent and be subject to the same rules and regulations as to payment of costs and the form and mode of pleading except so far as regards the pleading of the additional facts hereinbefore required to be pleaded by such defendant as if actions for libel had not been excepted from the personal actions in which it is lawful to pay money into court and to such plea to such action it shall be competent to the plaintiff to reply generally denying the whole of such plea.

In an action against a newspaper for libel the defendant may plead that it was inserted without malice and without neglect and may pay money into court as amends.
11 Vic. No. 13 s. 6.
1 Pring 479.
6 & 7 Vic. c. 96 s. 2.

Cross Action and Equitable Plea.

54. All matters which at present are only the subject of a cross action or may be made the subject of a cross action between the parties shall hereafter by leave of a judge and on such terms as he shall think proper be pleadable by way of set-off.

Subjects of cross action may be pleaded.
20 Vic. No. 31 s. 17.
2 Pring 1649.

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Equitable defence
may be pleaded.

29 Vic. No. 31 s. 48.
2 Pring 1653.

17 & 18 Vic. c. 125
s. 83.

Equitable defence
after judgment.

29 Vic. No. 31 s. 49.
2 Pring 1653.

17 & 18 Vic. c. 125
s. 84.

Equitable replica-
tion.

20 Vic. No. 31 s. 50.
2 Pring 1653.

17 & 18 Vic. c. 125
s. 85.

Court or judge may
strike out equitable
plea or replication.

20 Vic. No. 31 s. 51.
2 Pring 1653.

17 & 18 Vic. c. 125
s. 86.

Plea of matter subse-
quent to action.

17 Vic. No. 21 s. 62.
2 Pring 1621.

15 & 16 Vic. c. 76
s. 68.

Plea *puis darrein con-*
tinuance when and
how to be pleaded.

17 Vic. No. 21 s. 63.
2 Pring 1621.

15 & 16 Vic. c. 76
s. 69.

Forms in schedule
may be adopted.

17 Vic. No. 21 s. 81.
2 Pring 1624.

15 & 16 Vic. c. 76
s. 91.

General rules may
be made by the
judges.

17 Vic. No. 21 s. 174.
2 Pring 1638.

15 & 16 Vic. c. 76
s. 223.

27 Vic. No. 14 s. 20.
3 Pring 316.

55. It shall be lawful for the defendant or the plaintiff in replevin in any cause in which if judgment were obtained he would be entitled to relief against such judgment on equitable grounds to plead the facts which entitle him to such relief by way of defence and the said court is hereby empowered to receive such defence by way of plea provided that such plea shall begin with the words "for defence on equitable grounds" or words to the like effect.

56. Any such matter which if it arose before or during the time for pleading would be an answer to the action by way of plea may if it arise after the lapse of the period during which it could be pleaded be set up by way of *audita querela*.

57. The plaintiff may in answer to any plea reply facts avoiding such plea upon equitable grounds. Provided that the replication shall begin with the words "for reply on equitable grounds" or to that effect.

58. Provided always that in case it shall appear to the court or any judge thereof that any such equitable plea or equitable replication cannot be dealt with by a court of law so as to do justice between the parties it shall be lawful for such court or judge to order the same to be struck out on such terms as to costs and otherwise as to such court or judge may seem reasonable.

Pleas puis Darrein Continuance.

59. Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion and any plea which does not state whether the defence therein set up arose before or after action shall be deemed to be a plea of matter arising before action.

60. In cases in which a plea *puis darrein continuance* has heretofore been pleadable *in banc* or at *nisi prius* the same defence may be pleaded with an allegation that the matter arose after the last pleading and such plea may when necessary be pleaded in vacation but no such plea shall be allowed unless accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of such plea or unless the court or a judge shall otherwise order.

Forms.

61. The instructions and forms contained in the schedule to this Act annexed shall be sufficient and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms so long as the substance is expressed without prolixity.

Powers of the Court.

62. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper. Provided that nothing herein contained

Commencement and Short Title.

Short title.

Form of Issue on Special Case.

18. That

31 VICTORIA No. 5.

Breach of promise of marriage. 18. That the plaintiff and defendant agreed to marry one another and a reasonable time for such marriage has elapsed and the plaintiff has always been ready and willing to marry the defendant yet the defendant has neglected and refused to marry the plaintiff.

Breach of promise of marriage.

19. That the plaintiff and defendant agreed to marry one another on a day now elapsed and the plaintiff was ready and willing to marry the defendant on that day yet the defendant neglected and refused to marry the plaintiff.

Warranty of a horse.

20. That the defendant by warranting a horse to be then sound and quiet to ride sold the said horse to the plaintiff yet the said horse was not then sound and quiet to ride.

For not loading pursuant to charter-party.

21. That the plaintiff and the defendant agreed by charter-party that the plaintiff's ship called the "Ariel" should with all convenient speed sail to R. or so near thereto as she could safely get and that the defendant should there load her with a full cargo of tallow or other lawful merchandise which she should carry to H. and there deliver on payment of freight pounds per ton and that the defendant should be allowed ten days for loading and ten for discharge and ten days for demurrage if required at pounds per day and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R. and that the time for so doing has elapsed yet the defendant made default in loading the agreed cargo.

Upon a lease for rent.

22. That the plaintiff let to the defendant a house number forty George street Brisbane for seven years to hold from the day of A.D. at pounds a year payable quarterly of which rent quarters are due and unpaid.

Upon a covenant to repair.

23. That the plaintiff by deed let to the defendant a house number forty George street Brisbane to hold for seven years from the day of A.D. and the defendant by the said deed covenanted with the plaintiff well and substantially to repair the said house during the said term [*according to the covenant*] yet the said house was during the said term out of good and substantial repair.

For Wrongs independent of Contract.

Trespass to land.

24. That the defendant broke and entered certain land of the plaintiff called the Big Field and depastured the same with cattle.

Assault battery and false imprisonment.

25. That the defendant assaulted and beat the plaintiff gave him into custody to a policeman and caused him to be imprisoned in a police office.

Wrongful conversion of goods.

26. That the defendant converted to his own use or wrongfully deprived the plaintiff of the use and possession of the plaintiff's goods that is to say iron hoops household furniture [*or as the case may be.*].

Wrongful detention of property &c.

27. That the defendant detained from the plaintiff his title deeds of land called Belmont in the county of that is to say [*describe the deeds*].

Diverting water from a mill.

28. That the plaintiff was possessed of a mill and by reason thereof was entitled to the flow of a stream for working the same and the defendant by cutting the bank of the said stream diverted the water thereof away from the said mill.

Infringement of a patent

29. That the plaintiff was the first inventor of a certain new manufacture that is to say of "certain improvements in the manufacture of sulphuric acid" for which he obtained letters patent for the term of fourteen years from the day of A.D. subject to a condition that the plaintiff should within six calendar months cause to be enrolled an instrument in writing particularly describing the nature of his said invention and the plaintiff did within the time prescribed fulfil the said condition and the defendant during the said term did infringe the said patent right.

Defamation of character. Slander.

30. That the defendant falsely and maliciously spoke and published of the plaintiff the words following that is to say "he is a thief" [*if there be any special damage here state it with such reasonable particularity as to give notice to the defendant of the peculiar injury complained of for instance*] whereby the plaintiff lost his situation as overseer in the employ of A.

Libel.

31. That the defendant falsely and maliciously printed and published of the plaintiff in a newspaper called " " the words following that is to say "he is a regular prover under bankruptcies" the defendant meaning thereby that the plaintiff had proved and was in the habit of proving fictitious debts against the estates of bankrupts with the knowledge that such debts were fictitious.

Commencement of Plea.

Plea.

32. The defendant by his attorney [*or in person*] says [*here state the substance of the plea*].

33. And for a second plea the defendant says [*here state the second plea*].

Pleas in Actions on Contracts.

Denial of debt.

34. That he never was indebted as alleged.

[*This plea is applicable to declarations like those numbered one to thirteen*].

Denial of contract.

35. That he did not promise as alleged.

[*This*

[This plea is applicable to other declarations on simple contracts not on bills and notes such as those numbered eighteen to twenty-one. It would be unobjectionable to use "did not warrant" "did not agree" or any other appropriate denial.] 31 VICTORIA No. 5.

36. That the alleged deed is not his deed.

Denial of deed.

37. That the alleged cause of action did not accrue within six years [state the period of limitation applicable to the case] before this suit. Statute of limitations.

38. That before action he satisfied and discharged the plaintiff's claim by payment.

Payment.

39. That the plaintiff at the commencement of this suit was and still is indebted to the defendant in an amount equal to the plaintiff's claim for [here state the cause of set-off as in a declaration see forms ante] which amount the defendant is willing to set off against the plaintiff's claim. Set-off.

40. That after the alleged claim accrued and before this suit the plaintiff by deed released the defendant therefrom. Release.

Pleas in Actions for Wrongs independent of Contract.

41. That he is not guilty.

Not guilty.

42. That he did what is complained of by the plaintiff's leave.

Leave and license.

43. That the plaintiff first assaulted the defendant who thereupon necessarily committed the alleged assault in his own defence. Self defence.

44. That the defendant at the time of the alleged trespass was possessed of land the occupiers whereof for twenty years before this suit enjoyed as of right and without interruption a way on foot and with cattle from a public highway over the said land of the plaintiff to the said land of the defendant and from the said land of the defendant over the said land of the plaintiff to the said public highway at all times of the year for the more convenient occupation of the said land of the defendant and that the alleged trespass was a use by the defendant of the said way. Right of way.

45. That the defendant at the time of the alleged trespass was possessed of land the occupiers whereof for thirty years before this suit enjoyed as of right and without interruption common of pasture over the said land of the plaintiff for all their cattle levant and couchant upon the said land of the defendant at all times of the year as to the said land of the defendant appertaining and that the alleged trespass was a use by the defendant of the said right of common. Right of common.

Replications.

46. The plaintiff takes issue upon the defendant's first second [et cetera] pleas.

Joinder of issue.

47. The plaintiff as to the second plea says [here state the answer to the plea as in the following forms.] Replication to pleas containing new matter.

48. That the alleged release is not the plaintiff's deed.

To plea of release.

49. That the alleged release was procured by the fraud of the defendant.

Fraud.

50. That the alleged set-off did not accrue within six years before this suit.

To plea of set-off.

51. That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage whereupon the plaintiff requested the defendant to leave the said land which the defendant refused to do and thereupon the plaintiff gently laid his hands on the defendant in order to remove him doing no more than was necessary for that purpose which is the alleged first assault by the plaintiff. To self defence.

52. That the occupiers of the said land did not for twenty years before this suit enjoy as of right and without interruption the alleged way. To right of way.

New Assignment.

53. The plaintiff as to the and pleas says that he sues not for the trespasses therein admitted but for trespasses committed by the defendant in excess of the alleged rights and also in other parts of the said land and on other occasions and for other purposes than those referred to in the said pleas. To the pleas of right of way and right of common.

[If the Plaintiff replies and new assigns the New Assignment may be as follows --]

54. And the plaintiff as to the and pleas further says that he sues not only for the trespasses in those pleas admitted but also for [et cetera.]

[If the Plaintiff replies and new assigns to some of the Pleas and new assigns only to the other the Form may be as follows --]

55. And the plaintiff as to the and pleas further says that he sues not for the trespasses in the pleas [the pleas not replied to] admitted but for the trespasses in the pleas [the pleas replied to] admitted and also for [et cetera].

31 VICTORIA No. 22. **An Act to Consolidate and Amend the Laws relating to Frauds and the Limitation of Actions.** [28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to frauds and to the limitation of actions Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

Australia and the adjacent islands not to be deemed beyond seas.

1. No part of Australia nor any island adjacent thereto (being part of the dominions of Her Majesty) shall be deemed to be beyond seas within the meaning of this Act.

Statute of Frauds.

Parol leases and interest of freehold shall have the force of estates at will only 29 Car. II. c. 3 s. 1.

2. All leases estates interests of freehold or terms of years or any uncertain interest of in to or out of any messuages lands tenements or hereditaments made or created by livery and seisin only or by parol and not put in writing and signed by the parties so making or creating the same or their agents thereunto lawfully authorised by writing shall have the force and effect of leases or estates at will only and shall not either in law or equity be deemed or taken to have any other or greater force or effect any consideration for making any such parol lease or estates or any former law or usage to the contrary notwithstanding.

Except leases not exceeding three years &c. 29 Car. II. c. 3 s. 2.

3. Except nevertheless all leases not exceeding the term of three years from the making thereof whereupon the rent reserved to the landlord during such term shall amount unto two third parts at the least of the full improved value of the thing demised.

No leases or estates of freehold shall be granted or surrendered by word. 29 Car. II. c. 3 s. 3.

4. No leases estates or interests either of freehold or terms of years or any uncertain interest of in to or out of any messuages lands tenements or hereditaments shall be assigned granted or surrendered unless it be by deed or note in writing signed by the party so assigning granting or surrendering the same or their agents thereunto lawfully authorised by writing or by act and operation of law.

Promises and agreements by parol. 29 Car. II. c. 3 s. 4.

5. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate (2) or whereby to charge the defendant upon any special promise to answer for the debt default or miscarriages of another person (3) or to charge any person upon any agreement made upon consideration of marriage (4) or upon any contract or sale of lands tenements or hereditaments or any interest in or concerning them (5) or upon any agreement that is not to be performed within the space of one year from the making thereof (6) unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised.

6. No

6. No special promise made by any person after the twenty-fifth day of August one thousand eight hundred and sixty-four to answer for the debt default or miscarriage of another person being in writing and signed by the party to be charged therewith or some other person by him thereunto lawfully authorised shall be deemed invalid to support an action suit or other proceeding to charge the person by whom such promise shall have been made by reason only that the consideration of such promise does not appear in writing or by necessary inference from a written document.

31 VICTORIA No. 22.
—
Consideration for guarantee need not appear by writing.
28 Vic. No. 6 s. 3.
3 Pring 227.
19 & 20 Vic. c. 97 s. 3.

7. No promise to answer for the debt default or miscarriage of another made to a firm consisting of two or more persons or to a single person trading under the name of a firm and no promise to answer for the debt default or miscarriage of a firm consisting of two or more persons or of a single person trading under the name of a firm shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm or in the person trading under the name of a firm unless the intention of the parties that such promise shall continue to be binding notwithstanding such change shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise.

Guarantee to or for a firm to cease upon a change in the firm except in special cases.
28 Vic. No. 6 s. 4.
3 Pring 227.
19 & 20 Vic. c. 97 s. 1.

8. No contract for the sale of any goods wares and merchandises for the price of ten pounds sterling or upwards shall be allowed to be good except the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the bargain or in part of payment or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract or their agents thereunto lawfully authorised and the enactments of this section shall extend to all contracts for the sale of goods of the value of ten pounds sterling and upwards notwithstanding the goods may be intended to be delivered at some future time or may not at the time of such contract be actually made procured or provided or fit or ready for delivery or some act may be requisite for the making or completing thereof or rendering the same fit for delivery.

Contracts for sales of goods for ten pounds or more.
29 Car. II. c. 3 s. 17.

The enactments of this section extended to contracts for goods of ten pounds or upwards although the delivery be not made.
9 Geo. IV. c. 14 s. 7.
1 Pring 473.

9. In actions of debt or upon the case grounded upon any simple contract no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of this or any statute of limitations or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby and where there shall be two or more joint contractors or executors or administrators of any contractor no such joint contractor executor or administrator shall lose the benefit of such enactments so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them. Provided always that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever. Provided also that in actions

In actions of debt or upon the case no acknowledgment shall be deemed sufficient unless it be in writing or by part payment.
9 Geo. IV. c. 14 s. 1.
1 Pring 472.

Joint contractors.

Proviso for the case joint contractors.

31 VICTORIA No. 22. actions to be commenced against two or more such joint contractors or executors or administrators if it shall appear at the trial or otherwise that the plaintiff though barred by this or any statute of limitations as to one or more of such joint contractors or executors or administrators shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise or otherwise judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.

Provisions of the preceding section extended to acknowledgments by agents.
28 Vic. No. 6 s. 10.
3 Pring 228.
19 & 20 Vic. c. 97 s. 13.

10. In reference to the provisions of the next preceding section and of the fourteenth section of this Act an acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby duly authorised to make such acknowledgment or promise shall have the same effect as if such writing had been signed by such party himself.

Indorsements of payments.
9 Geo. IV. c. 11 s. 3.
1 Pring 473.

11. No indorsement or memorandum of any payment written or made upon any promissory note bill of exchange or other writing by or on the behalf of the party to whom such payment shall be made shall be deemed sufficient proof of such payment so as to take the case out of the operation of this or any statute of limitations.

Confirmation of promises made by infants.
9 Geo. IV. c. 14 s. 5.
1 Pring 473.

12. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy or upon any ratification after full age of any promise or simple contract made during infancy unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Representations of character.
9 Geo. IV. c. 14 s. 6.
1 Pring 473.

13. No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character conduct credit ability trade or dealings of any other person to the intent or purpose that such other person may obtain credit money or goods thereupon unless such representation or assurance be made in writing signed by the party to be charged therewith.

Memorandums exempted from stamps.
9 Geo. IV. c. 14 s. 8.
1 Pring 473.

14. No memorandum or other writing made necessary by the ninth tenth twelfth and thirteenth sections of this Act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

Simple contract debts alleged by way of set-off.
9 Geo. IV. c. 14 s. 4.
1 Pring 473.

15. This and every statute of frauds or limitations shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant either by plea notice or otherwise.

Statute of Limitations.

The limitation of certain personal actions.
21 Jac. 1. c. 16 s. 3.
23 Vic. No. 6 s. 7.
3 Pring 227.

16. All actions of trespass *quare clausum fregit* all actions of trespass detinue action sur trover and replevin for taking away of goods and cattle all actions of account and upon the case all actions of debt grounded upon any lending or contract without specialty all actions of debt for arrearages of rent and all actions of assault menace battery wounding and imprisonment or any of them shall be commenced and sued within the time and limitation hereafter expressed and not after that is to say the said actions upon the case (other

(other than for slander) and the said actions for account and the said actions for trespass debt detinue and replevin for goods or cattle and the said action of trespass *quare clausum fregit* within six years next after the cause of such actions or suits and not after and the said actions of trespass of assault battery wounding imprisonment or any of them within four years next after the cause of such actions or suits and not after and the said actions upon the case for words within two years next after the words spoken and not after.

17. All suits and actions in the Court of Admiralty for seamen's wages shall be commenced and sued within six years next after the cause of such suit or actions shall accrue and not after.

18. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage judgment or lien or otherwise charged upon or payable out of any land or rent at law or in equity or any legacy but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same unless in the meantime some part of the principal money or some interest thereon shall have been paid or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent and in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment or the last of such payments or acknowledgments if more than one was given.

19. After the thirty-first day of December eighteen hundred and sixty-seven no suit or other proceeding shall be brought to recover the personal estate or any share of the personal estate of any person dying intestate possessed by the legal personal representative of such intestate but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same unless in the meantime some part of such estate or share or some interest in respect thereof shall have been accounted for or paid or some acknowledgment of the right thereto shall have been given in writing signed by the person accountable for the same or his agent to the person entitled thereto or his agent and in such case no such action or suit shall be brought but within twenty years after such accounting payment or acknowledgment or the last of such accountings payments or acknowledgments if more than one was made or given.

20. No arrears of dower nor any damages on account of such arrears shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit.

21. No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent or in respect of any legacy or any damages in respect of such arrears of rent or interest shall be recovered by any distress action or suit but within six years next after the same respectively shall have become due or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent signed by the person

31 VICTORIA No. 22.

Seaman's wages must be sued for within six years after cause of action accrued.

4 Anno c. 16 s. 17.

Money charged upon land and legacies to be deemed satisfied at the end of twenty years if there shall be no interest paid or acknowledgment in writing in the meantime.

3 & 4 Wm. IV. c. 27 s. 40.

2 Pring 1205.

Claims to estates of intestates.

23 & 24 Vict. c. 38 s. 13.

No arrears of dower to be recovered for more than six years.

3 & 4 Wm. IV. c. 27 s. 41.

2 Pring 1205.

No arrears of rent or interest to be recovered for more than six years.

3 & 4 Wm. IV. c. 27 s. 42. 2 Pring 1205.

by

31 VICTORIÆ No. 22. by whom the same was payable or his agent Provided nevertheless that where any prior mortgagee or other encumbrancer shall have been in possession of any land or in the receipt of the profits thereof within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other encumbrance on the same land the person entitled to such subsequent mortgage or encumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or encumbrancer was in such possession or receipt as aforesaid although such time may have exceeded the said term of six years.

Limitation of certain
actions of debt &c.
25 Vic. No. 13 s. 59.
2 Pring 1606.
Same as 3 & 4 Wm.
IV. c. 42 s. 3.

22. All actions of debt for rent upon any indenture of demise all actions of covenant or debt upon any bond or other specialty and all actions of debt or *scire facias* upon any recognizance and all actions of debt upon any award where the submission is not by specialty or for money levied under *feri facias* and all actions for penalties damages or sums given to the party grieved by any law now or hereafter in force in this colony shall be commenced and sued within the time and limitation hereinafter expressed but not afterwards that is to say the said actions of debt for rent or covenant or debt upon any bond or other specialty and actions of debt or *scire facias* upon recognizance within twenty years after the cause of such actions the said actions by the party grieved within two years after the cause of such actions and the said other actions within six years after the cause of such actions Provided that nothing herein contained shall extend to any actions given by an Act or statute where the time for bringing such action is or shall be thereby specially limited.

Infants and persons
beyond sea &c.
25 Vic. No. 13 s. 60.
2 Pring 1606.
3 & 4 Wm. IV. c. 42
s. 4.

23. If any person entitled to any such action or *scire facias* shall be at the time the cause of action accrued within the age of twenty-one years *femme covert* or *non compos mentis* then such person shall be at liberty to commence the same action within such times after being of full age discover of sound memory as other persons having no such impediment should have done and if any person against whom there shall be any such cause of action shall be at the time such action accrued beyond sea then the party entitled to any such cause of action shall be at liberty to bring the same against such person within such times as are before limited after the return of such person from beyond sea.

Proviso as to
acknowledgments.
25 Vic. No. 13 s. 61.
2 Pring 1606.
3 & 4 Wm. IV. c. 42
s. 5.

24. If any acknowledgment shall have been made either by writing signed by the party liable under any such indenture specialty or recognizance or his agent or by part payment or satisfaction on account of the principal or interest due thereon it shall be lawful for the person entitled to such actions to bring his action for the money remaining unpaid and so acknowledged within twenty years after such acknowledgment or part payment or satisfaction or in case any person entitled to such action shall at the time of such acknowledgment be under disability as aforesaid or the party making such acknowledgment shall then be beyond sea then within twenty years after such disability shall have ceased or such party shall have returned from beyond sea as the case may be and in answer to a plea of this Act the plaintiff in any such action may reply such acknowledgment and that such action was brought within such time as aforesaid.

25. All

25. All actions of account or for not accounting and suits for such accounts as concern the trade of merchandise between merchant and merchant their factors or servants shall be commenced and sued within six years after the cause of such actions or suits and no claim in respect of a matter which arose more than six years before the commencement of any action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.

31 VICTORIA No. 22.
Limitation of actions for merchants' accounts.
28 Vic. No. 6 s. 7.
3 Pring 227.
19 & 20 Vic. c. 97 s. 9.

26. In reference to the enactments of the sixteenth and twenty-second sections of this Act when there shall be two or more co-contractors or co-debtors whether bound or liable jointly only or jointly and severally or executors or administrators of any contractor no such co-contractor or co-debtor executor or administrator shall lose the benefit of the said enactments or any of them so as to be chargeable in respect or by reason only of payment of any principal interest or other money by any other or others of such co-contractors or co-debtors executors or administrators.

Part payment by one contractor &c. not to prevent bar by limitation in favor of another contractor &c.
28 Vic. No. 6 s. 11.
3 Pring 228.
19 & 20 Vic. c. 97 s. 11.

27. No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same may be brought is fixed by the sixteenth seventeenth eighteenth nineteenth twentieth twenty-first and twenty-second sections of this Act shall be entitled to any time within which to commence and sue such action or suit beyond the period so fixed for the same by the enactments aforesaid by reason only of such persons or some one or more of such persons being at the time such cause of action or suit accrued beyond the seas or by reason of such person or some one or more of such persons being imprisoned at the time such cause of action or suit accrued.

Absence beyond seas or imprisonment of a creditor not to be a disability.
28 Vic. No. 6 s. 8.
3 Pring 227.
19 & 20 Vic. c. 97 s. 10.

28. Where any cause of action or suit with respect to which the period of limitation is fixed in the said last-mentioned sections lies against two or more joint debtors the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond the seas at the time the cause of action or suit accrued after his or their return from beyond the seas by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond the seas at the time aforesaid.

Period of limitation to run as to joint debtors in the colony though some are beyond seas.
28 Vic. No. 6 s. 9.
3 Pring 228.

Judgment recovered against joint debtors in the colony to be no bar to proceeding against others beyond seas after their return.
19 & 20 Vic. c. 97 s. 11.

Commencement and Short Title.

29. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Statute of Frauds and Limitations of 1867.*"

Commencement of Act.
Short title.

31 VICTORIE No. 13. **An Act to Consolidate and Amend the Law of Evidence and Discovery at Common Law.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the law of evidence and discovery at common law Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Judicial Notice.

Proclamations and Orders in Council to be judicially noticed. 22 Vic. No. 12 s. 6. 1 Pring 13.

Copies of private Acts journals of the Legislative Council and Assembly proclamations and commissions by the Governor printed by the government printer admissible as evidence. 13 Vic. No. 16 s. 4. 1 Pring 569. 8 & 9 Vic. c. 113 s. 3.

Courts &c. to take judicial notice of signature of the judges of Supreme Court and of certain officers thereof. 13 Vic. No. 16 s. 3. 1 Pring 568. 8 & 9 Vic. c. 113 s. 2.

13 Vic. No. 16 s. 3. 1 Pring 568. 8 & 9 Vic. c. 113 s. 2.

1. Every proclamation or order of the Governor in Council made or purporting to be made in pursuance of any Act or statute and published in the *Gazette* shall be judicially taken notice of.

2. All copies of private and local and personal Acts not being public Acts and all copies of the journals of the Legislative Council and Legislative Assembly and all proclamations and commissions issued by the Governor or by the officer administering the Government for the time being if purporting to be printed by the government printer or by the authority of the Government shall be admitted as *prima facie* evidence thereof by all courts judges justices and others in the said colony without proof being given that such copies were so printed.

3. All courts judges justices prothonotaries masters in equity registrars commissioners or other persons officiating judicially shall henceforth take judicial notice of the signature of any of the judges of the Supreme Court and also of the prothonotary and master in equity and registrar thereof respectively and of any deputy or acting prothonotary master in equity or registrar of the said Supreme Court Provided such signature shall purport to be attached or appended to any decree order certificate or other judicial or official document.

Competency and Privileges of Witnesses.

Witnesses not to be excluded from giving evidence by incapacity from crime or interest. 8 Vic. No. 1 s. 1. 1 Pring 566. 16 Vic. No. 11 s. 1. 1 Pring 571. 6 & 7 Vic. c. 85 s. 1. 14 & 15 Vic. c. 99. 16 & 17 Vic. c. 83.

8 Vic. No. 1 s. 1. 1 Pring 566.

16 Vic. No. 11 s. 1. 1 Pring 571.

6 & 7 Vic. c. 85 s. 1. 14 & 15 Vic. c. 99. 16 & 17 Vic. c. 83.

4. No person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition according to the practice of the court on the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or proceeding civil or criminal in any court or before any judge jury sheriff coroner magistrate officer or person having by law or by consent of parties authority to hear receive and examine evidence in the Colony of Queensland but every person so offered may and shall be admitted to give evidence on oath or solemn affirmation or declaration in those cases wherein such affirmation or declaration is by law receivable notwithstanding that such person may or shall have an interest in the matter in question or in the event of the trial of any issue matter question or injury or of the suit action or proceeding in which he is offered as a witness and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence.

5. On

5. On the trial of any issue joined or of any matter or question or on any inquiry arising in any suit action or other proceeding in any court of justice or before any person having by law or by consent of parties authority to hear receive and examine evidence the parties thereto and the persons in whose behalf any such suit action or other proceeding may be brought or defended and the husbands and wives of such parties and persons respectively shall except as hereinafter excepted be competent and compellable to give evidence either *vide voce* or by deposition according to the practice of the court on behalf of either or any of the parties to the said suit action or other proceeding.

31 VICTORIA No. 13.
Parties to actions and their husbands and wives made competent and compellable to give evidence for or against themselves.
16 Vic. No. 14. s. 2.
1 Pring 571.
22 Vic. No. 7 s. 2.
1 Pring 574.
14 & 15 Vic. c. 99 s. 2.
16 & 17 Vic. c. 83 s. 1.

6. Nothing in the section last preceding contained shall apply to any action suit proceeding or bill in any court instituted in consequence of adultery or to any action for breach of promise of marriage.

Nemo tenetur Seipsum accusare.

7. Nothing hereinbefore contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction competent or compellable to give evidence for or against himself or herself or shall render any person compellable to answer any question tending to criminate himself or herself.

Exceptions in proceedings for adultery or breach of promise of marriage.
16 Vic. No. 14 s. 4.
1 Pring 571.
18 Vic. No. 13 s. 1.
1 Pring 573.
14 & 15 Vic. c. 99 s. 4.
Persons charged or witnesses impeachable criminally.
16 Vic. No. 14 s. 3.
1 Pring 571.
14 & 15 Vic. c. 99 s. 3.

Husband and Wife.

8. Nothing hereinbefore contained shall render any husband competent or compellable to give evidence for or against his wife or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding or in any proceeding instituted in consequence of adultery.

Exceptions as to criminal cases or proceedings for adultery.
22 Vic. No. 7 s. 3.
1 Pring 574.
16 & 17 Vic. c. 83 s. 2.

9. No husband shall be competent or compellable to disclose any communication made to him by his wife during the marriage and no wife shall be competent or compellable to disclose any communication made to her by her husband during the marriage.

Communications to husband or wife privileged.
22 Vic. No. 7 s. 4.
1 Pring 574.
16 & 17 Vic. c. 83 s. 3.

10. On any petition presented by a wife praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty or of adultery coupled with desertion the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Wife petitioning for dissolution of marriage husband and wife may give evidence relating to cruelty or desertion.
22 & 23 Vic. c. 61 s. 6.

Rated Inhabitant.

11. No inhabitant or person rated or liable to be rated to any rates or cesses of any district wholly or in part maintained or supported thereby or executing or holding any office thereof or therein shall before any court or person or persons whatsoever be deemed and taken to be by reason thereof an incompetent witness for or against such district in any matter relating to such rates or cesses or to the boundary between such district and any adjoining district or the election or appointment of any officer or officers or the allowance of the accounts of any officer or officers of any such district.

Rateable inhabitants not incompetent witnesses in certain cases on behalf of or against certain districts.
51 Geo. III. c. 170 s. 9.

12. No person called as a witness on any trial in any court whatever may and shall be disabled of or prevented from giving evidence by reason only of such person being as the inhabitant of any district rated or assessed or liable to be rated or assessed for any purpose whatever.

Persons not disqualified from giving evidence on account of being assessed to rates.
3 & 4 Vic. c. 26 s. 1.

13. No

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Nominal rateable parties on any trial not disqualified from giving evidence.
3 & 4 Vic. c. 23 s. 2.

Word "district" to include province county &c.

Certain verdicts or judgments not to be used for or against witness.
25 Vic. No. 13 s. 51.
2 Pring 1605.

How far a party may discredit his own witness.
Buller's *Nisi Prius* p. 297.

Melhuish v. Collier
19 L.J. Q.B. p. 493,
15 Q.B. 878.

20 Vic. No. 31 s. 11.
2 Pring 1649.
17 & 18 Vic. c. 125 s. 25.
28 Vic. c. 18 s. 3.

Greenough v. Eccles
and others 28 L.J.
C.P. 160 5 C.B. N.S.
786.

Contradictory statements of adverse witness.

13. No officer in and for any district nor any person rated or assessed or liable to be rated or assessed as aforesaid shall be disabled or prevented from giving evidence on any trial appeal or other proceeding by reason only of his being a party to such trial appeal or other proceeding or of his being liable to costs in respect thereof when he shall be only a nominal party to such trial appeal or other proceeding and shall be only liable to contribute to such costs in common with other the ratepayers of such district.

14. In the three sections last preceding the word "district" shall be held to include province county parish city town township hamlet and other like division.

Interest.

15. If any witness shall be objected to as incompetent on the ground that the verdict or judgment in the action would be admissible in evidence for or against him such witness shall nevertheless be examined but in that case no verdict or judgment pronounced or signed in any action shall at any time be admissible in evidence for or against any witness examined at the trial of the same or any one claiming under him Provided that the name of every witness so objected to shall at the trial at the request of either party be indorsed on the record or document on which such trial is had by some officer of the court together with the name of the party calling him and be afterwards entered on the record of the judgment which judgment or entry shall in any subsequent proceeding be sufficient evidence that such witness was so examined.

Credit of Party's own Witness.

16. And whereas 'a party never shall be permitted to produce general evidence to discredit his own witness for that would be to enable him to destroy the witness if he spoke against him and to make him a good witness if he spoke for him with the means in his hand of destroying his credit if he spoke against him but if a witness prove facts in a cause which make against the party who called him yet the party may call other witnesses to prove that those facts were otherwise for such facts are evidence in the cause and the other witnesses are not called directly to discredit the first witness but the impeachment of his credit is incidental and consequential only' Now therefore be it further provided and be it enacted as follows—A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character but he may in case the witness shall in the opinion of the judge prove adverse contradict him by other evidence or by leave of the judge prove that he has made at other times a statement inconsistent with his present testimony but before such last-mentioned proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and he must be asked whether or not he has made such statement Provided that nothing in the enactments of this section contained shall limit the common law right of a party to prove facts which are evidence on the trial.

Cross-examination and Credit of Witnesses.

17. If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the trial and inconsistent

inconsistent with his present testimony does not distinctly admit that he has made such statement proof may be given that he did in fact make it but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and he must be asked whether or not he has made such statement.

18. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject matter of the trial without such writing being shown to him but if it is intended to contradict such witness by the writing his attention must before such contradictory proof can be given be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided that it shall be competent for the judge at any time during the trial to require the production of the writing for his inspection and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

19. A witness on any trial may be questioned as to whether he has been convicted of any felony or misdemeanor and upon being so questioned if he either denies the fact or refuses to answer it shall be lawful for the opposite party to prove such conviction and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence signed by the clerk of the court where the offender was convicted or by the deputy of such clerk or officer (for which certificate a fee of five shillings and no more shall be demanded and taken) shall upon proof of the identity of the person be sufficient evidence of the said conviction and such certificate shall *prima facie* be deemed to be so signed if it purport so to be and without proof of the signature or official character of the person appearing to have signed the same.

20. A witness cannot by law refuse to answer a question relevant to the matter in issue the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit either at the instance of Her Majesty or of any other person or persons.

Admissions.

21. Either party may call on the other party by notice to admit any document saving all just exceptions and in case of refusal or neglect to admit the costs of proving the document shall be paid by the party so neglecting or refusing whatever the result of the cause may be unless at the trial the judge shall certify that the refusal to admit was reasonable and no costs of proving any document shall be allowed unless such notice be given except in cases where the omission to give the notice is in the opinion of the prothonotary a saving of expense.

22. An affidavit of the attorney in the cause or his clerk of the due signature of any admissions made in pursuance of such notice and annexed to the affidavit shall be in all cases sufficient evidence of such admissions.

31 VICTORIA No. 13.
20 Vic. No. 31 s. 12
2 Pring p. 1619.
17 & 18 Vic. c. 25
s. 23.
28 Vic. c. 18 s. 4.

Cross-examination as to previous statements in writing.
20 Vic. No. 31 s. 13.
2 Pring p. 1619.
17 & 18 Vic. c. 125
s. 24.
28 Vic. c. 18 s. 5.

Proof of previous conviction of a witness may be given.
17 & 18 Vic. c. 125
s. 25.
28 Vic. c. 18 s. 6.

Declaring the law respecting witness refusing to answer questions.
16 Geo. III. c. 37
s. 6.

Admissions as to documents.
17 Vic. No. 21 s. 92.
2 Pring 1625.
12 & 16 Vic. c. 76
s. 117.

Proof of admissions.
17 Vic. No. 21 s. 93.
2 Pring 1625.
15 & 16 Vic. c. 76
s. 118.

31 VICTORIE No. 13.

Proof of notice to produce.

17 Vic. No. 21 s. 94.

2 Pring 1650.

15 & 16 Vic. c. 76 s. 119.

23. An affidavit of the attorney in the cause or his clerk of the service of any notice to produce in respect of which notice to admit shall have been given and of the time when it was served with a copy of such notice to produce annexed to such affidavit shall be sufficient evidence of the service of the original of such notice and of the time when it was served.

Proof of Handwriting.

Comparison of disputed writing.

20 Vic. No. 31 s. 15.

2 Pring 1649.

17 & 18 Vic. c. 125 s. 26.

23 Vic. c. 18 s. 8.

24. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Proof of Attested Writings.

Attesting witness.

20 Vic. No. 31 s. 14.

2 Pring 1649.

17 & 18 Vic. c. 125 s. 26.

23 Vic. c. 18 s. 7.

25. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite and such instrument may be proved by admission or otherwise as if there had been no attesting witness thereto.

Secondary Evidence.

Machine copies to be evidence.

22 Vic. No. 7 s. 6.

1 Pring 574.

26. When any writing whatsoever shall have been copied by means of any machine or press which produces a *fac simile* impression or copy of such writing such impression or copy shall upon proof to the satisfaction of the court or person having by law or by consent of parties authority to hear receive and examine evidence that the same was taken or made from the original writing by means of such machine or press as aforesaid be *prima facie* evidence of such writing without any proof that such impression or copy was compared with the said original thereof and without any notice to produce such original.

Wills.

Wills deeds &c. may be verified on declaration.

9 Vic. No. 9 s. 8.

2 Pring 1034.

27. It shall and may be lawful to and for any attesting witness to the execution of any will or codicil deed or instrument in writing and to and for any other competent person to verify and prove the signing sealing publication or delivery of any such will codicil deed or instrument in writing by declaration in writing made under the *Oaths Act* or any like Act for the time being and every justice notary or other officer or person by law authorised to administer an oath shall be and is hereby authorised and empowered to administer or receive such declaration.

Plaintiff with notice of trial to give notice that he will use such declaration.

28. The party intending to adduce such verification and proof as in the section last preceding mentioned shall give such notice of such his intention to give in evidence such a declaration as is in the last preceding section mentioned as may be required by any general rules and orders made as hereinafter mentioned otherwise such declaration shall not be admissible.

Probate or office copy to be evidence of the will in suits relating to real estate unless the validity of the will is disputed.

27 Vic. No. 14 s. 18.

3 Pring 315.

20 & 21 Vic. c. 77 s. 64.

29. In any action at law or suit in equity where according to law it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced

notice

notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed or a copy thereof respectively stamped with the seal of the Supreme Court (or such other notice as may be required by any general rules and orders made as hereinafter mentioned) and in every such case such probate or letters of administration or copy thereof respectively stamped as aforesaid shall be sufficient evidence of such will and of its validity and contents notwithstanding the same may not have been proved in solemn form unless the party receiving such notice shall within four days after such receipt give notice that he disputes the validity of such devise or other testamentary disposition.

31 VICTORIA No. 13.

30. In every case in which in any such action or suit the original will shall be produced and proved it shall be lawful for the court or a judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

When original will proved court may direct which party shall pay costs.
20 & 21 Vic. c. 77
s. 65.

Judgments Decrees and Orders.

31. Copies of all judgments decrees rules and orders filed or recorded in the Supreme Court of the said colony at Brisbane shall be admitted as evidence of the contents thereof by all courts judges justices and other legal tribunals and in every judicial proceeding in the said colony without production of the originals of such documents respectively provided the copies of such orders and decrees made in the equitable jurisdiction of the said Supreme Court at Brisbane be certified under the hand of the master in equity of the said court and that such copies of all judgments decrees rules and orders made in the common law and ecclesiastical jurisdiction of the said Supreme Court at Brisbane be certified under the hand of the prothonotary or chief clerk thereof. And they shall be deemed *prima facie* to be so certified if they purport to be so certified.

Copies of judgments decrees rules and orders of Supreme Court to be received in evidence if duly certified by master prothonotary chief clerk or deputy registrar respectively.
13 Vic. No. 16 s. 1.
1 Pring 568.

Convictions and Orders.

32. Whenever in any proceeding whatever it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof but it shall be sufficient that it be certified under the hand of the clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place or by the deputy of such clerk or other officer that the paper produced is a copy of the record of the indictment or information trial conviction judgment or acquittal as the case may be omitting the formal part thereof. And it shall be deemed *prima facie* to be so certified if it purport to be so certified.

Proof of conviction or acquittal.
16 Vic. No. 14 s. 8.
1 Pring 572.
17 & 18 Vic. c. 125
s. 25.

33. In every case civil or criminal in which it shall be necessary to prove that any person was convicted of any offence or sentenced to any punishment or pecuniary fine before or by any court or justices or was ordered by any court or justices to pay any sum of money a certificate under the hand of the officer having ordinarily the custody of the records or documents and proceedings showing such conviction sentence or order shall upon proof of the identity

Evidence to prove a conviction or sentence.
22 Vic. No. 7 s. 7.
1 Pring 574.

31 VICTORIÆ No. 13. identity of the party be sufficient evidence of such conviction sentence or order and of the particular offence or matter in respect of which it was had or passed or made if stated in such certificate. Provided that the time and place of such conviction sentence or order shall be stated therein with the title of the court in which or the names of the justices by or before whom the same was so had or made. Provided also that a document purporting so to be shall be deemed *prima facie* to be such a certificate.

The like as to the fact of a trial or inquiry.
22 Vic. No. 7 s. 8.
1 Pring 575.

34. In every case civil or criminal in which it shall be necessary to prove that any particular cause or case or matter was tried or under inquiry in any court or before any judge or justices or justice a like certificate under the hand of the officer having ordinarily the custody of the records or documents and proceedings showing the pendency or existence of such cause or case or matter shall be taken as evidence of the fact of such trial or inquiry and of the particular nature and occasion or ground and cause thereof if stated in such certificate. Provided that the time and place of such trial or inquiry shall be stated therein with the title of the court in which all the names or name of the justices or justice by or before whom the same occurred or was had or pending. Provided also that a document purporting so to be shall be deemed *prima facie* to be such a certificate.

Proof of certificate.
22 Vic. No. 7 s. 9.
1 Pring 575.

35. Every such certificate or paper purporting to be a certificate stating that the party signing the same has ordinarily the custody of the records documents or proceedings referred to therein shall be *prima facie* evidence of that fact and of the signature and official character of such party.

Ship's Register.

Registers of British vessels and certificates of registry admissible as *prima facie* evidence of their contents without proof of signature &c.
14 & 15 Vic. c. 99 s. 12.

36. Every register of a vessel kept under any of the Acts relating to the registry of British vessels may be proved in any court of justice or before any person having by law or by consent of parties authority to hear receive and examine evidence either by the production of the original or by an examined copy thereof or by a copy thereof purporting to be certified under the hand of the person having the charge of the original and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same upon payment of the sum of one shilling and every such register or such copy of a register and also every certificate of registry granted under any of the Acts relating to the registry of British vessels and purporting to be signed as required by law shall be received in evidence in any court of justice in Queensland or before any person having by law or by consent of parties authority to hear receive and examine evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced and of all the matters contained recited in or indorsed on such certificate of registry when the said certificate is produced. And a copy purporting to be so certified and a certificate purporting to be so signed shall be deemed *prima facie* to be so certified and signed respectively.

Documentary

Documentary Evidence in General.

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37. Every document which by any law now in force or hereafter to be in force is or shall be admissible in evidence of any particular in any court of justice in England or Ireland without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same shall be admitted in evidence to the same extent and for the same purposes in any court of justice in Queensland or before any person having in Queensland by law or by consent of parties authority to hear receive and examine evidence without proof of the seal or stamp or signature authenticating the same or of the judicial or official character of the person appearing to have signed the same.

Documents admissible without proof of seal in England or Ireland admissible in Queensland.
14 & 15 Vic. c. 99 s. 9.

38. Any document purporting to have affixed impressed or subscribed thereon or thereto the seal and signature of any British ambassador envoy minister charge d'affaires secretary of embassy or legation consul-general consul vice-consul acting consul pro-consul or consular agent in testimony of any oath affidavit affirmation or notarial act having been administered sworn affirmed had or done by or before him shall be deemed *prima facie* to be so affixed impressed or subscribed and shall accordingly be admitted in evidence without proof of any such seal and signature being the seal and signature of the person whose seal and signature the same purport to be or of the official character of such person.

Certain documents to be evidence without proof of seal or signature of official persons.
28 Vic. No. 18.
3 Pring 128.
18 & 19 Vic. c. 42.

39. All proclamations treaties and other Acts of State of the United Kingdom or of any foreign state or British colony and all judgments decrees orders and other judicial proceedings of any court of justice in Great Britain and Ireland or of any foreign state or British colony and all affidavits pleadings and other legal documents filed or deposited in any such court may be proved in any court of justice or before any person having by law or by consent of parties authority to hear receive and examine evidence either by examined copies or by copies authenticated as hereinafter mentioned that is to say if the document sought to be proved be a proclamation treaty or other Act of State the authenticated copy to be admissible in evidence must be sealed with the seal of the United Kingdom or other proper seal in that behalf or with the seal of the foreign state or British colony to which the original document belongs and if the document sought to be proved be a judgment decree order or other judicial proceeding of any British foreign or colonial court or an affidavit pleading or other legal document filed or deposited in any such court the authenticated copy to be admissible in evidence must either be sealed with the seal of the court to which the original document belongs or in the event of such court having no seal must be signed by the judge or if there be more than one judge by any one of the judges of the said court and such judge shall attach to his signature a statement in writing on the said copy that the court whereof he is a judge has no seal but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence without any proof of the seal where a seal is necessary or of the signature or of the

Evidence of Acts of State and of judgments in any British colonial and foreign courts.
16 Vic. No. 14 s. 7.
1 Pring 571.
14 & 15 Vic. c. 99 s. 7.

31 VICTORIÆ No. 13. the truth of the statement attached thereto where such signature and statement are necessary or of the judicial character of the person appearing to have made such signature and statement.

Certain official entries
and copies evidence.
11 Vic. No. 38 s. 1.
1 Pring 567.

Certified copies
thereof.

Proviso as to fees.
11 Vic. No. 38 s. 2.
1 Pring 567.

Proof of books and
documents of a
public nature by
certified copies or
extracts.
16 Vic. No. 4 s. 9.
1 Pring 572.
14 & 15 Vic. c. 99
s. 14.

Certain documents
to be received in evi-
dence without proof
of signature or seal.
13 Vic. No. 16 s. 2.
1 Pring 568.
8 & 9 Vic. c. 113 s. 1.

40. Every entry or copy now kept or hereafter to be kept as of record or for public or official purposes in the office of the Colonial Secretary or of the Registrar-General purporting to be an entry or copy of any letters patent or deed of grant from the Crown of any land situated in the said colony to any person or persons whomsoever shall in case the letters patent or deed of grant of which the same purports to be an entry or copy shall not be produced in evidence be deemed and taken to be of the same force and effect as the original letters patent or deed of grant under the seal of the said colony duly recorded and signed by the Governor of the said colony for the time being and a copy of any such entry or copy kept or hereafter to be kept as of record as aforesaid of any such letters patent or deed of grant certified to be a true copy under the hand of the said Colonial Secretary or the Registrar-General for the time being shall upon proof made that such certificate has been signed by the said Colonial Secretary or Registrar-General for the time being (and whom it shall not be necessary to prove to be such Colonial Secretary or Registrar-General) shall have the same force and effect for the purposes of evidence to all intents and purposes whatsoever as if the original letters patent or deeds of grant of which the copy so produced and certified shall purport to be a copy of the entry or copy as aforesaid had been produced in evidence. Provided that for every such copy a fee at the rate of one shilling and threepence for every folio of seventy-two words shall be charged previously to the delivery of the same and the amount thereof shall be duly paid by the officer receiving the same into the Colonial Treasury for the public uses of the said colony and in support of the government thereof.

41. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody and no Act exists which renders its contents provable by means of a copy any copy thereof or extract therefrom shall be admissible in evidence in any court of justice or before any person now or hereafter having by law or by consent of parties authority to hear receive and examine evidence provided it be proved to be an examined copy or extract or provided it be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of a reasonable sum for the same not exceeding fourpence for every folio of ninety words and every copy purporting to be so signed and certified shall be *prima facie* taken to be so signed and certified.

42. Whenever by any Act now in force or hereafter to be in force any certificate or official or public document or document or proceeding of any corporation or joint stock or other company or any certified copy of any document or bye-law or entry in any registry or other book or of any other proceeding shall be receivable in evidence of any particulars in any court of justice or before any legal tribunal or before

before either chamber of the Legislature of the said colony or any committee thereof or in any judicial proceeding the same shall respectively be admitted in evidence provided they respectively are or be sealed or impressed with a stamp and signed as directed by the respective Acts made or to be hereafter made and they shall *prima facie* be deemed to be so sealed impressed or signed if they purport so to be and without any proof of the seal or stamp where a seal or stamp is necessary or of the signature or of the official character of the persons appearing to have signed the same and without any further proof thereof in every case in which the original record or document could have been received in evidence.

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Speeches or Addresses.

43. Upon the trial of any civil cause the addresses to the court or jury shall be regulated as follows—the party who begins or his counsel shall be allowed in the event of his opponent not announcing at the close of the case of the party who begins his intention to adduce evidence to address the court or jury a second time at the close of such case for the purpose of summing up the evidence and the party on the other side or his counsel shall be allowed to open the case and also to sum up the evidence (if any) and the right to reply shall be the same as at present.

Speeches to the jury.
17 & 18 Vic. c. 125
s. 18.
20 Vic. No 31 s. 58.
2 Pring 1654.
20 Vic. No. 31 s. 59.
2 Pring p. 1654.
20 Vic. No. 31 s. 60.
2 Pring 1654.

44. If a prisoner or prisoners defendant or defendants shall be defended by counsel but not otherwise it shall be the duty of the clerk or proper officer of the court at the close of the case for the prosecution to ask the counsel for each prisoner or defendant so defended by counsel whether he or they intend to adduce evidence and in the event of none of them thereupon announcing his intention to adduce evidence the counsel for the prosecution shall be allowed to address the jury a second time in support of his case for the purpose of summing up the evidence against such prisoner or prisoners or defendant or defendants and upon every trial for felony or misdemeanor whether the prisoners or defendants or any of them shall be defended by counsel or not each and every such prisoner or defendant or his or their counsel respectively shall be allowed if he or they shall think fit to open his or their case or cases respectively and after the conclusion of such opening or of all such openings if more than one such prisoner or prisoners or defendant or defendants or their counsel shall be entitled to examine such witnesses as he or they may think fit and when all the evidence is concluded to sum up the evidence respectively and the right of reply and practice and course of proceedings save as hereby altered shall be as at present and the word “counsel” in this section shall be construed to apply to attorneys in all cases where attorneys are allowed by law or by the practice of any court to appear as advocates.

Summing up in cases
of felony and misde-
meanor.
23 Vic. c. 8. s. 2.

Stamp.

45. Every instrument liable to stamp duty shall be admitted in evidence in any criminal proceeding although it may not have the stamp required by law impressed thereon or affixed thereto.

46. Upon the production of any document as evidence at the trial of any cause not being a criminal proceeding the officer of the court whose duty it is to read such document shall call the attention

Instruments admissi-
ble as evidence in
criminal cases though
not properly stamped.
30 Vic. No. 14 s. 30.
17 & 18 Vic. c. 83
s. 27.

Provision as to un-
stamped documents

of

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 at any trial not
 criminal.
 30 Vic. No. 14 s. 23.
 17 & 18 Vic. c. 125
 s. 28.

Officers of the court
 to receive and account
 for the duty and fine.
 30 Vic. No. 14 s. 24.
 17 & 18 Vic. c. 125
 s. 9.

No deed affecting
 lands in the colony
 to require stamp.
 20 Vic. No. 23.
 1 Pring 573.

Power to deliver
 written interroga-
 tories to opposite
 party.
 17 & 18 Vic. c. 125
 s. 51.

Affidavits by party
 proposing to interro-
 gate and his attorney.
 17 & 18 Vic. c. 125 s.
 52.

of the judge to any omission or insufficiency of the stamp and the document if unstamped or not sufficiently stamped shall not be received in evidence until the whole or the deficiency of the stamp duty and the fine required by this or any Act in that behalf shall have been paid.

47. Such officer of the court shall upon payment to him of such stamp duty and fines give a receipt for the amount of the same and thereupon such document shall be admissible in evidence saving all just exceptions on other grounds and an entry of the fact of such payment and of the amount thereof shall be made in a book kept by such officer who shall at the end of each sittings or assizes duly make a return to the commissioners of any moneys which he has so received by way of duty or fine distinguishing between such moneys and stating the name of the cause and of the parties from whom he received such moneys and the date and description of the document for the purpose of identifying the same and he shall pay over the said moneys to the commissioners. And such officers shall for the purposes in this Act mentioned be deemed public accountants under the provisions of *The Audit Act* for the time being and the commissioners shall upon request and production of the receipt hereinbefore mentioned cause such document to be stamped with the proper stamp in respect of the sums so paid as aforesaid.

48. No conveyance or other instrument affecting real estate within this colony or power of attorney authorising the execution or registering of any such conveyance or other instrument executed at any place out of this colony shall be inadmissible in evidence in this colony by reason of the same not being stamped according to the stamp laws in force at the place where such conveyance or other instrument or power of attorney was executed.

Interrogation of Parties.

49. In all causes in the Supreme Court by order of the court or a judge the plaintiff may with the declaration and the defendant may with the plea or either of them by leave of the court or a judge may at any other time deliver to the opposite party or his attorney (provided such party if not a body corporate would be liable to be called and examined as a witness upon such matter) interrogatories in writing upon any matter as to which discovery may be sought and require such party or in case of a body corporate any of the officers of such body corporate within ten days to answer the questions in writing by affidavit to be sworn and filed in the ordinary way and any party or officer omitting without just cause sufficiently to answer all questions as to which a discovery may be sought within the above time or such extended time as the court or a judge shall allow shall be deemed to have committed a contempt of the court and shall be liable to be proceeded against accordingly.

50. The application for such order shall be made upon an affidavit of the party proposing to interrogate and his attorney or agent or in the case of a body corporate of their attorney or agent stating that the deponents or deponent believe or believes that the party proposing to interrogate whether plaintiff or defendant will derive material benefit in the cause from the discovery which he seeks
 that

that there is a good cause of action or defence upon the merits and if the application be made on the part of the defendant that the discovery is not sought for the purpose of delay. Provided that where it shall happen from unavoidable circumstances that the plaintiff or defendant cannot join in such affidavit the court or judge may if they or he think fit upon affidavit of such circumstances by which the party is prevented from so joining therein allow and order that the interrogatories may be delivered without such affidavit.

51. In case of omission without just cause to answer sufficiently such written interrogatories it shall be lawful for the court or a judge at their or his discretion to direct an oral examination of the interrogated party as to such points as they or he may direct before a judge or commissioner and the court or judge may by such rule or order or any subsequent rule or order command the attendance of such party or parties before the person appointed to take such examination for the purpose of being orally examined as aforesaid or the production of any writings or other documents to be mentioned in such rule or order and may impose therein such terms as to such examination and the costs of the application and of the proceedings thereon and otherwise as to such court or judge shall seem just.

52. Such rule or order shall have the same force and effect and may be proceeded upon in like manner as any rule or order made for the examination of persons as witnesses.

Commissions for Examining Witnesses.

53. It shall be lawful for the Supreme Court or any judge thereof in any action or suit depending in such Supreme Court or in any district or other inferior court upon the application of any of the parties to such action or suit to order the examination on oath upon interrogatories or otherwise before some person to be named in such order of any witnesses within Queensland or its dependencies or to order a commission to issue for the examination of witnesses on oath at any place or places out of Queensland and its dependencies by interrogatories or otherwise and by the same or any subsequent order or orders to give all such directions touching the time place and manner of such examination as well within Queensland and its dependencies as without and all other matters and circumstances connected with such examinations as may appear reasonable and just and it shall be lawful for every person authorised to take the examination of witnesses by any rule order writ or commission made or issued in pursuance of this Act and he is hereby authorised and required to take all such examinations.

54. When any rule or order shall be made for the examination of witnesses within Queensland or its dependencies by authority of this Act it shall be lawful for the Supreme Court or any judge thereof in and by the first rule or order to be made in the matter or any subsequent rule or order to command the attendance of any person to be named in such rule or order for the purpose of being examined or the production of any writings or other documents to be mentioned in such rule or order and to direct the attendance of any such person at his own place of abode or elsewhere if necessary or convenient so

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Oral examination of parties when to be allowed.

17 & 18 Vic. c. 125 s. 53.

Proceedings upon such rule or order. 17 & 18 Vic. c. 125 s. 54.

Order or commission to examine witnesses. 1 Wm. IV. c. 22 s. 4. 1 Pring 564.

Witnesses may be ordered to attend for examination. 1 Wm. IV. c. 22 s. 5. 1 Pring 564.

31 VICTORIA No. 13. to do and the wilful disobedience of any such rule or order shall be deemed a contempt of the Supreme Court and proceedings may be thereupon had by attachment (the judges' order being made a rule of court before or at the time of the application for an attachment) if in addition to the service of the rule or order an appointment of the time and place of attendance in obedience thereto signed by the person or persons appointed to take the examination or by one or more of such persons shall be also served together with or after the service of such rule or order. Provided always that every person whose attendance shall be so required shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial. Provided also that no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compellable to produce at the trial of the cause.

Examination of Prisoners.

Examination of prisoners.
1 Wm. IV. c. 22 s. 6.
1 Pring 564.

55. It shall be lawful for any sheriff gaoler or other officer having the custody of any prisoner to take such prisoner for examination under the authority of this Act by virtue of a writ of *habeas corpus* to be issued for that purpose which writ shall and may be issued by the Supreme Court or a judge thereof under such circumstances and in such manner as such court or judge may now by law issue the writ commonly called a writ of *habeas corpus ad testificandum*.

Examination and Depositions of Witnesses.

Examinations of witnesses to be taken upon oath.
1 Wm. IV. c. 22 s. 7.
1 Pring 565.

56. It shall be lawful for all and every person authorised to take the examination of witnesses by any rule order writ or commission made or issued in pursuance of this Act and he and they are hereby authorised and required to take all such examinations upon the oath of the witnesses.

Persons appointed for taking examinations to report to the court upon the conduct or absence of witnesses if necessary.
1 Wm. IV. c. 22 s. 8.
1 Pring 565.

57. It shall and may be lawful for the master prothonotary or any other persons to be named in any such rule or order as aforesaid for taking any examination in pursuance thereof and he and they are hereby required to make if need be a special report to the court touching such examination and the conduct or absence of any witness or other person thereon or relating thereto and the court is hereby authorised to institute such proceedings and make such order and orders upon such report as justice may require and as may be instituted and made in any case of contempt of the court.

Costs of the order for examination may be made costs in the cause.
1 Wm. IV. c. 22 s. 9.
1 Pring 565.

58. The costs of every rule or order to be made for the examination of witnesses under any commission or otherwise by virtue of this Act and of the proceedings thereupon shall (except in the case hereinbefore provided for) be costs in the cause unless otherwise directed either by the judge making such rule or order or by the judge before whom the cause may be tried or by the court.

Depositions not to be read without proof of absence death or sickness.
1 Wm. IV. c. 22 s. 10.
1 Pring 565.

59. No examination or deposition to be taken by virtue of this Act shall be read in evidence without the consent of the party against whom the same may be offered unless it shall appear to the satisfaction of the court or person having by law or consent of parties authority to hear receive and examine evidence that the examinant or deponent is such party or is beyond the jurisdiction of the Supreme Court or dead

dead or unable from permanent sickness or other permanent infirmity to attend in all or any of which cases the examinations and depositions certified under the hand of the commissioners master prothonotary or other person taking the same shall and may without proof of the signature to such certificate be received and read in evidence saving all just exceptions.

60. Provided that where any examination taken under the order of any judge for that purpose shall be offered in evidence the same may be read without proof of the examinant being beyond the jurisdiction of the court or unable to attend the trial and where such examination shall appear to be certified under the hand of the person appointed or authorised to take the same no proof shall be necessary of the signature of such person. Provided nevertheless that where it shall be made to appear that in fact the examinant is within the jurisdiction and able to attend as aforesaid then such examination shall be rejected.

61. Affidavits and affirmations duly taken under this Act shall and may be received read and made use of in and before any court of law or equity or other judicature whatever in the Colony of Queensland and the judges and officers thereof in or in relation to any action suit cause matter or proceeding in or before any such court or judicature in like manner and shall be of the same force and effect as affidavits and affirmations taken in or before such court or judicature or by any person duly commissioned or authorised by such court or judicature to take such affidavits or affirmations and shall be filed and dealt with accordingly.

62. In all cases whether at law or in equity or in any ecclesiastical proceeding where any witness shall be beyond seas or at a greater distance than two hundred miles from the intended place of trial or shall from age or infirmity be unable to attend the trial or where from either of such last-mentioned causes or from his or her being about to depart beyond sea or to some place beyond the said distance of two hundred miles the testimony of any such witness shall be in danger of being lost it shall be lawful for any judge to grant a commission or make an order at any stage of the cause for the examination of such witness either *viva voce* or upon interrogatories as any judge shall think fit to direct and before such person or persons or such commissioner or other officer of the court as he shall for that purpose appoint and every such examination being duly taken and returned shall be allowed and read as evidence at the trial or hearing accordingly.

Evidence in Criminal Cases.

63. The like commission may be issued or order made under the section last preceding and under the like circumstances in any criminal case if on the application or by and with the consent of the Attorney-General or the Crown Prosecutor as well as the prisoner but not otherwise.

64. No confession which is tendered in evidence on any criminal proceeding shall be received which has been induced by any untrue representation or by any threat or promise whatever and every confession made after any such representation or threat or promise shall be deemed to have been induced thereby unless the contrary be shown.

65. In

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Affidavits taken under this Act may be used in courts in the colony.

25 Vic. No. 13 s. 50.
2 Pring 1604.

Such examinations may be read without proof.

28 Vic. No. 18 s. 1.
3 Pring 128.

Provision for examining witnesses *de bene esse* or on commission.

25 Vic. No. 13 s. 51.
2 Pring 1604.

Commissions in criminal cases.
25 Vic. No. 13 s. 51.
2 Pring 1605.

Confessions.
22 Vic. No. 7 s. 11.
1 Pring 575.

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Depositions.

11 & 12 Vic. c. 42 s. 17.

1 Pring 775.

7 Geo. IV. c. 64 ss. 1 and 2.

65. In all cases where any person shall appear or be brought before any justice or justices of the peace charged with any indictable offence whether such person appear voluntarily upon summons or have been apprehended with or without warrant or be in custody for the same or any other offence such justice or justices shall take the examination of such person and shall put the same or so much thereof as may be material into writing and shall subscribe the same and deliver or transmit the same to the proper officer and before he or they shall commit such accused person to prison for trial or before he or they shall admit him to bail shall in the presence of such accused person who shall be at liberty to put questions to any witness produced against him take in the form A hereto subjoined or to the like effect the statement on oath or affirmation of those who shall know the facts and circumstances of the case and shall put the same into writing and such depositions shall be read over to and signed respectively by the witnesses who shall have been so examined and shall be signed also by the justice or justices taking the same and the justice or justices before whom any such witness shall appear to be examined as aforesaid shall before such witness is examined administer to such witness the usual oath or affirmation which such justice or justices shall have full power and authority to do and if upon the trial of the person so accused as first aforesaid it shall be proved by the oath or affirmation of any credible witness that any person whose deposition shall have been taken as aforesaid is dead or so ill as not to be able to travel and if also it be proved that such deposition was taken in the presence of the person so accused and that he or his counsel or attorney had a full opportunity of cross-examining the witness then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken it shall be lawful to read such deposition as evidence in such prosecution without further proof thereof unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

Oath or affirmation.

Depositions of persons dead or absent.

FORM A.

Depositions of Witnesses.

To wit. }

Form M.

11 & 12 Vic. c. 42.

1 Pring 788.

The examination of C. D. of _____ in the Colony of Queensland [farmer] and E. F. of _____ in the said colony [laborer] taken on [oath] this _____ day of _____ in the year of our Lord one thousand eight hundred and _____ at _____ in and for the colony aforesaid before the undersigned one [or two] of Her Majesty's justices of the peace for the said [colony] in the presence and hearing of A. B. who is charged this day before me [or us] for that he [or she] the said A. B. on the _____ day of _____ at _____ in the said colony [&c. describing the offence as in a warrant of commitment] This deponent C. D. on his [or her] oath saith as follows [&c. stating the deposition of the witness as nearly as possible in the words he uses When his deposition is complete let him sign it.]

And this deponent E. F. upon his [or her] oath saith as follows [&c.]

The above depositions of C. D. and E. F. were taken and [sworn] before me [or us] at _____ in the said colony on the day and year first above mentioned.

J. S.

Statement of prisoner.

11 & 12 Vic. c. 42 s. 1.

1 Pring 776.

12 & 13 Vic. c. 69

s. 18.

66. After the examination of all the witnesses on the part of the prosecution as aforesaid shall have been completed the justice of the peace or one of the justices by or before whom such examination shall have been so completed as aforesaid shall without requiring the attendance of the witnesses read or cause to be read to the accused the depositions

depositions taken against him and shall say to him these words or 31 VICTORIA No. 13.
words to the like effect—

Having heard the evidence do you wish to say anything in answer to the charge?
You are not obliged to say anything unless you desire to do so but whatever you say will be
taken down in writing and may be given in evidence against you upon your trial

and whatever the prisoner shall then say in answer thereto shall
be taken down in writing in the form B hereto subjoined or to the like
effect and read over to him and shall be signed by the said justice or
justices and kept with the depositions of the witnesses and shall be
transmitted with them to the proper officer and afterwards upon
the trial of the said accused person the same may if necessary be given
in evidence against him without further proof thereof if the same
purport to be signed by the justice or justices by or before whom
the same purports to have been taken unless it shall be proved
that the justice or justices purporting to sign the same did not
in fact sign the same Provided always that the said justice or justices
before such accused person shall make any statement shall state to
him and give him clearly to understand that he has nothing to hope
from any promise of favor and nothing to fear from any threat which
may have been holden out to him to induce him to make any
admission or confession of his guilt but that whatever he shall then
say may be given in evidence against him upon his trial notwith-
standing such promise or threat Provided nevertheless that nothing
herein enacted or contained shall prevent the prosecutor in any case
from giving in evidence any admission or confession or other
statement of the person accused or charged made at any time which
by law would be admissible as evidence against such person.

FORM B.

Statement of the Accused.

To wit. }

A B. stands charged before the undersigned one [or two] of Her Majesty's justices Form N.
of the peace in and for the [colony] aforesaid this day of in the year of 11 & 12 Vic. c. 42.
our Lord one thousand for that he [or she] the said A. B. on the day of 1 Pring 789.
at in the said colony [etc. as in the caption of the depositions] and the
said charge being read to the said A. B. and the witnesses for the prosecution C. D. and
E. F. being severally examined in his [or her] presence the said A. B. is now addressed by
me [or us] as follows—" Having heard the evidence do you wish to say anything in
answer to the charge you are not obliged to say anything unless you desire to do so but
whatever you say will be taken down in writing and may be given in evidence against you
upon your trial" whereupon the said A. B. saith as follows—

[Here state whatever the prisoner may say and in his very words as nearly as
possible Get him to sign it if he will.]

A. B.

Taken before me [or us] at in the said colony the day and year first
above mentioned.

J. S.

67. In every case where any witness who shall have been Depositions of
called and examined before the justice or justices by and on behalf of prisoners' witnesses
a party committed or held to bail shall happen to die before the trial dying before trial.
and in cases in which the witness shall be so ill as not to 14 Vic. No. 43 s. 16.
be able to travel and in all cases in which the justices who committed 1 Pring 767.
the prisoner or held him to bail shall have certified before such 17 Vic. No. 39 s. 13.
committal or holding to bail that the evidence of the witness is 1 Pring 827.
material and that he is in their belief willing to attend the trial but Attendance of wit-
will nesses for prisoner.

31 VICTORIÆ No. 13. will be unable to bear the expense of attendance the deposition of such witness may be read in evidence to the jury in the prisoner's defence if the party on trial shall so require. Provided that where any witness has in due time before the trial been subpoenaed by the Crown such certificate of such justices shall not render the deposition admissible.

Witnesses for prisoner or defendant to be sworn.
1 Anne s. 2 c. 9 s. 3.

68. All and every person and persons who shall be produced or appear as a witness or witnesses on the behalf of the prisoner or defendant upon any trial for treason or felony or any indictable offence or offence punishable on summary conviction or other offence whatsoever or upon the examination before justices of a prisoner or defendant charged with any indictable offence whatsoever before he or she be admitted to depose or give any manner of evidence shall first take an oath to depose the truth the whole truth and nothing but the truth in such manner as the witnesses for the Queen are by law obliged to do and if convicted of any wilful perjury in such evidence shall suffer all the punishments penalties forfeitures and disabilities which by any law or statute are and may be inflicted upon persons convicted of wilful perjury.

Defendant may have copies of the depositions.
11 & 12 Vic. c. 42. s. 27.

69. At any time after all the examinations aforesaid shall have been completed and before the first day of the assizes or sessions or other first sitting of the court at which any person so committed to prison or admitted to bail as aforesaid is to be tried such person may require and shall be entitled to have of and from the officer or person having the custody of the same copies of the depositions on which he shall have been committed or bailed on payment of a reasonable sum for the same not exceeding the rate of three halfpence for each folio of ninety words.

Examination of Parties.

Proviso.
18 Vic. No. 13 s. 3.
1 Pring 573.

70. In all cases in which any person not being a party to the suit action or proceeding may now be examined as a witness *de bene esse* or under a commission it shall be lawful for the court or a judge to order or permit any party to the suit action or proceeding to be so examined on such terms in all respects as the court or judge may think reasonable and every examination thereupon taken if the same would have been admissible in the case of an ordinary witness may be read in evidence at the trial or hearing accordingly.

Discovery of documents.
20 Vic. No. 3 s. 23.
2 Pring 1650.

71. Provided that no *de bene esse* examination shall be allowed under the last preceding clause on the ground of intended departure from the colony or to remote parts within the same unless it be shown to the satisfaction of the court or judge that such departure is in fact urgently required by unavoidable circumstances or some unexpected emergency and that the examination is not sought in order to avoid cross-examination before the court or a jury.

Discovery and Inspection.

Examination of parties *de bene esse* or under commission.
18 Vic. No. 13 s. 2.
1 Pring 573.

72. Upon the application of either party to any cause or other civil proceeding upon an affidavit by such party or his attorney of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party it shall be lawful for the court or judge to order that the party against whom such application is made or if such party is a body corporate that some officer to be named of such body corporate

corporate shall answer on affidavit stating what documents he or they has or have in his or their possession or power relating to the matters in dispute or what he knows as to the custody they or any of them are in and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power and upon such affidavit being made the court or judge may make such further order therein as shall be just.

73. Whenever any action or other legal proceeding shall henceforth be pending in the Supreme Court such court and each of the judges thereof may respectively on application made for such purpose by either of the litigants compel the opposite party to allow the party making the application to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding and if necessary to take examined copies of the same or to procure the same to be duly stamped in all cases in which previous to the passing of this Act a discovery might have been obtained by filing a bill or by any other proceeding in a court of equity at the instance of the party so making application as aforesaid to the said court or judge.

74. Either party shall be at liberty to apply to the court or a judge for a rule or order for the inspection by the jury or by himself or by his witnesses or by so many and such of the persons summoned as jurors for the trial as may be thought desirable of any real or personal property the inspection of which may be material to the proper determination of the question in dispute and it shall be lawful for the court or a judge if they or he think fit to make such rule or order upon such terms as to costs and otherwise as such court or judge may direct. Provided always that nothing herein contained shall affect the provisions of any Act as to obtaining a view by a jury. Provided also that all rules and regulations now in force and applicable to the proceedings by view shall be held to apply to proceedings for inspection by a jury under the provisions of this Act or as near thereto as may be.

Penalties.

75. If any person shall forge the seal stamp signature impression or print of any document in this Act mentioned or referred to or shall tender in evidence any such document with a false or counterfeit seal stamp signature impression or print thereto knowing the same to be false or counterfeit he shall be guilty of felony and shall upon conviction be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement.

76. Whenever any document has been tendered or admitted in evidence by virtue of this Act the court or the person to whom the same has been tendered or who has admitted the same may at the request of any party against whom the same is so tendered or admitted in evidence direct that the same shall be impounded and be kept in the custody of some officer of the court or other proper person for such period and subject to such conditions as to the said court

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Orders for inspection
of documents.
16 Vic. No. 14 s. 6.
1 Pring 571.

Inspection by jury or
parties or witnesses.
20 Vic. No. 31 s. 21.
2 Pring 1650.
Jury Act of 1867
ss. 18 and 19.

Punishment for forg-
ing or uttering any
forged stamp seal or
signature of any
document mentioned
in this Act.
16 Vic. No. 14 s. 11.
1 Pring 572.

Impounding of docu-
ments and procedure
against offenders.
28 Vic. No. 18 s. 3.
3 Pring 128.
16 Vic. No. 14 s. 11.
1 Pring 572.

31 VICTORIA No. 13. court or person shall seem meet and every person charged with committing any felony under this Act may be dealt with indicted tried and if convicted sentenced and his offence may be laid and charged to have been committed in the district or place in which he may be apprehended or be in custody and every accessory before or after the fact to any such offence may be dealt with indicted tried and if convicted sentenced and his offence laid and charged to have been committed in any district or place in which the principal offender may be tried.

Government Printer.

Power of the Governor to appoint a government printer.
13 Vic. No. 16 s. 6.
1 Pring 569.

77. It shall and may be lawful for the Governor of the said colony or for the officer administering the government for the time being for and in behalf of Her Majesty to appoint a government printer for the said colony and such government printer to suspend or remove and to appoint another in his stead as occasion may from time to time in the opinion of the said Governor or officer administering the government aforesaid require.

Powers of the Court.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223.
27 Vic. No. 14 s. 20.
3 Pring 316.

78. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

Commencement and Short Title.

Commencement of Act.

Short title.

79. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Evidence and Discovery Act of 1867.*"

An Act to Consolidate and Amend the Laws 31 VICTORIA No. 34.
relating to Jurors and Juries.

[28th December, 1867.]

BE it enacted by the Queen's Most Excellent Majesty by and with Preamble.
the advice and consent of the Legislative Council and Legislative
Assembly of Queensland in Parliament assembled and by the authority
of the same as follows—

Qualification of Jurors—Jury Districts.

1. Every man except as hereinafter excepted between the ages Age and qualification
of jurors.
of twenty-one years and sixty years who shall have in his own name 6 Geo. IV. c. 50 s. 1.
11 Vic. No. 20. s. 1.
1 Pring 745.
or in trust for him real estate of the clear value of two hundred
pounds or who shall have in his own name or in trust for him the
clear yearly income of fifty pounds in real estate or who shall have
the clear yearly income of one hundred pounds in lands held by lease
or leases for the absolute term of twenty-one years or more or who
being the occupier of any land shall be rated or assessed in respect
thereof to any rate or duty whatsoever on an annual value of not less
than twenty-five pounds or who shall hold any land as tenant thereof
to any other person at a rent of not less than fifty pounds for the year
or in that proportion for any period less than a year shall be qualified
and liable to serve on all juries that may be empanelled for any trial
or inquiry within the jury district in which such person shall reside
but nothing herein contained shall extend to any inquest or inquiry
to be taken by or before any coroner by virtue of his office but every
such coroner shall and may take and make all inquests and inquiries
by jurors of the same description as they have been used and accus-
tomed to do before the commencement of this Act.

2. All executive councillors all members of the legislature all Exemptions from
serving on juries.
judges of courts whether of record or otherwise all chairmen of general 6 Geo. IV. c. 50 s. 2.
11 Vic. No. 20 s. 2
1 Pring 745.
sessions all stipendiary magistrates all official assignees in insolvency
all clergymen in holy orders all persons who shall teach or preach in
any religious congregation and shall follow no secular occupation
except that of a schoolmaster all schoolmasters all managers cashiers
accountants and tellers respectively employed as such in any bank all
barristers-at-law actually practising all attorneys solicitors proctors and
conveyancers duly admitted and actually practising and all officers and
servants of any such courts actually exercising the duties of their
respective offices or places all coroners gaolers and keepers of houses of
correction all physicians surgeons apothecaries chemists and druggists
duly qualified and in actual practice all officers in Her Majesty's
navy or army on full pay every member of any corps of volunteers
whom the Governor in Council shall in any year release in this behalf
and all masters of vessels actually trading and all pilots licensed under
any Act now or hereafter to be in force for the regulation of pilots in
any port all officers of customs and police all sheriffs and bailiffs and
their officers or assistants all constables all persons holding any office

31 VICTORIA No. 34. or employment in or under any department of the public service the mayor aldermen councillors town clerk and other officers and servants of any municipal corporation all household officers and servants of the Governor all postmasters and clerks of petty sessions and all inspectors of schools shall be and are hereby absolutely freed and exempted from being returned and from serving upon any juries whatsoever and shall not be inserted in the lists to be prepared as hereinafter mentioned.

Disqualifications.
6 Geo. IV. c. 50 s. 3.
11 Vic. No. 20 s. 3.
1 Pring 745.

3. No man (except only in the cases hereinafter expressly provided for) not being a natural born or naturalized subject of the Queen and no man who shall not be able to read and write and no man who shall have been convicted of any treason or felony or of any crime that is infamous (unless he shall have obtained a free pardon thereof) or who is insolvent or bankrupt and shall not have obtained his certificate is or shall be qualified to serve on any jury in any court or on any occasion whatsoever.

Jury districts.
11 Vic. No. 20 s. 4.
1 Pring 745.

4. For the city of Brisbane and for every town at which any assizes circuit court or court of general sessions shall hereafter be holden there shall be a jury district which shall comprise and include all places within thirty miles from the court house of such city or town and the said city of Brisbane and every other such town as aforesaid shall for the purposes of this Act be called a "court town" Provided always that whenever any such district as aforesaid would comprise and include therein any place which but for the provision next hereinafter contained would be comprised and included within any other jury district each such jury district shall in the direction between the court towns thereof respectively be limited and bounded by a straight line between the points of intersection of the circles round the court house of each of such court towns respectively Provided also that the words "circuit court" in this Act shall mean any court of *nisi prius* or court holden as at *nisi prius*.

Place of holding
court to be called a
"court town."

Jury Lists.

Warrant to constables
to make jury lists.
6 Geo. IV. c. 50 ss. 4
and 5.
11 Vic. No. 20 s. 5.
1 Pring 746.
First schedule.

5. The clerk of petty sessions at every court town and the clerk of petty sessions at every other town or place within the jury district of such court town shall before the last day of January in every year issue and deliver his warrant (in the form contained in the first schedule to this Act or as near thereto as may be) to one or more constables or officers of police within the said jury district together with a competent number of the printed forms of return and notice set forth respectively in the second and third schedules to this Act Provided always that it shall be lawful for such clerks before issuing such warrant to arrange and agree among themselves as to the portion of such district to which the warrants aforesaid shall be limited but each such clerk shall nevertheless be individually liable for the due performance of the several matters required by this Act throughout the whole of such district and shall for the non-performance thereof be subject to all and every the penalties by this Act imposed on any clerk of petty sessions.

Second and third
schedules.

Constables to prepare
lists of jurors.

6. Such constables and officers of police shall forthwith after the receipt of each warrant by them respectively prepare and make out

out in alphabetical order a true list of every man residing within the limits mentioned in such warrant who shall be qualified and liable to serve on juries as aforesaid with the christian and surname written at full length and with the true place of abode title quality profession calling or business and the nature of the qualification of every such man in the proper columns of the said form of return.

7. Such constables and officers of police having made out according to this Act a list of every man qualified and liable to serve on juries as aforesaid shall forthwith send by post or deliver a copy thereof to the sheriff of the bailiwick or a deputy duly appointed by him such appointment to be notified once in the *Government Gazette* within which the court town of the jury district for which such list shall have been made out is situated and shall on the first two Sundays in March in every year fix a notice in the form contained in the third schedule to this Act signed by them or one of them upon or near the principal outer door of the office or building in which such petty sessions are holden and of every church chapel and other public place of religious worship within the limits mentioned in the said warrant stating in the proper blanks in such form the time and the nearest town or place at which petty sessions are holden and shall keep the original list of men qualified and liable to serve as aforesaid or a true copy thereof to be inspected and perused by any of the inhabitants of the said jury district at any reasonable time during the first three weeks of the same month without any fee or reward to the end that notice may be given of men qualified and liable to serve as aforesaid who are omitted or of men inserted who ought to be omitted out of such list and any person who shall remove or deface any such notice shall forfeit a sum not exceeding five pounds nor less than forty shillings.

8. The justices within forty miles of every court town shall hold a special petty sessions for the purposes herein mentioned on the second Friday in April in every year at the usual place of holding petty sessions within the limits last aforesaid and such constables and officers of police as aforesaid shall then and there produce the list of men qualified and liable to serve as aforesaid by them prepared and made out as hereinbefore directed and shall answer upon oath such questions touching the same as shall be put to them or any of them by the justices then present and if any man not qualified and liable to serve as aforesaid is inserted in any such list it shall be lawful for the said justices upon satisfaction from the oath of the party complaining or other proof or upon their own knowledge that he is not qualified and liable to serve as aforesaid to strike his name out of such list and also to strike thereout the names of men disabled by lunacy or imbecility of mind or by deafness blindness or other permanent infirmity of body from service on juries and it shall also be lawful for such justices to insert in such list the name of any man omitted therefrom and likewise to reform any errors or omissions which shall appear to them to have been committed in respect to the name place of abode title quality profession calling business or the nature of the qualification of any man included in any such list Provided always that no man's name if omitted shall be inserted in such list nor shall any error or omission

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6 Geo. IV. c. 50 s. 8.

11 Vic. No. 20 s. 4.

1 Pring 746.

Constables to publish notice of lists.

6 Geo. IV. c. 50 s. 9.

11 Vic. No. 20 s. 7.

1 Pring 746.

Third schedule.

Petty sessions to be held to revise lists.

6 Geo. IV. c. 50 s. 10.

11 Vic. No. 23 s. 8

1 Pring 746.

31 VICTORIA No. 34. omission in the description of any man in such list be reformed by the said justices unless upon the application of such men respectively or unless such men respectively shall have had notice that an application for such purpose would be made to the justices at such petty sessions or unless the said justices at such petty sessions or any two of them shall cause notice to be given to such men respectively requiring them to show cause at some adjournment of such petty sessions to be holden within seven days thereafter why their names should not be inserted in such list or why any error or omission in the description of such men in such list should not be reformed And when every such list shall be duly corrected at such sessions or adjournment thereof it shall be allowed by the justices present or two of them who shall sign the same with their allowance thereof and the clerk of such petty sessions shall receive the list so allowed and shall before the seventh day of May then next send by post or deliver the same enclosed and secured under seal to the sheriff of the bailiwick or his deputy appointed as aforesaid within which the court town of the jury district for which such list shall have been so prepared and made out shall be situate.

Rate books may be inspected and questions asked.

6 Geo. IV. c. 50 s. 11.

11 Vic. No. 20 s. 8.

1 Pring 747.

9. Such constables and officers of police as aforesaid (for their assistance in completing the lists pursuant to this Act) may during the month of February in every year put to any person all such questions as they may think proper relating to the said lists and to the christian and surname place of abode title quality profession calling or business and the nature of the qualification of any man and shall (upon request made by them or any of them at any reasonable time in the same month to any person having the custody of any valuation rate or assessment for any city borough town or other place within the jury district) have free liberty to inspect any such valuation rate or assessment and take from thence the names of such men qualified to serve on juries as aforesaid dwelling within such jury district as may appear to them or any of them to be necessary or useful and every court of petty sessions and every justice shall upon the like request to any person having the custody of any such valuation rate or assessment have the like free liberty to inspect and make extracts from any such valuation rate or assessment for the purpose of assisting them in the reformation and completion of the jury lists according to this Act.

Formation of Panels.

Sheriff to provide boxes for jury cards.

10. The sheriff of every bailiwick or his deputy appointed as aforesaid shall procure and keep in his office for every court town within such bailiwick four substantial boxes of a circular or octagonal shape with flat ends and an axle on each of such ends and shall cause the same boxes respectively to be provided with lids and apertures of one half of the length of such boxes respectively and equidistant from each end thereof and of sufficient width to admit the hand and shall cause two of the said boxes to be painted white and two of the said boxes to be painted black and on one of the said boxes painted white shall cause to be legibly painted in black letters the name of the court town for which such box shall be intended with the words "Special jurors in use" and on the other of the said boxes painted white shall cause to be legibly painted in black letters the name of the same court town with the words

words "Special jurors in reserve" and on one of the said boxes painted black shall cause to be legibly painted in white letters the name of the same court town with the words "Common jurors in use" and on the other of the said boxes painted black shall cause to be legibly painted in white letters the name of the same court town with the words "Common jurors in reserve" and such sheriff or his deputy appointed as aforesaid shall cause all the said boxes to be placed horizontally on strong wooden frames so as that the same can be easily made to revolve on their said axles in the manner and for the purposes hereinafter mentioned and such sheriff or his deputy appointed as aforesaid shall cause such boxes to be at all times securely locked and shall keep the keys thereof in safe custody so that no person may have access to the content of such boxes or any of them except as hereinafter provided.

11. The sheriff or his deputy appointed as aforesaid shall keep the lists so sent and delivered to him by the clerks of petty sessions in his office and shall take from some one of such lists in the order in which they stand therein the names of all men who shall be described in such list as esquires accountants merchants brokers engineers architects warehousemen or commission agents and shall cause the names of all such men together with their respective places of abode and addition to be fairly and truly copied into a book to be called "The special jury book" and shall in like manner take from another of the said lists in the same order the names of all men who shall be described therein as last aforesaid and shall cause the names of all such men together with their respective places of abode and addition to be fairly and truly copied into the said book in consecutive order next and immediately after the name of the last man taken from the said preceding list and so on until he shall have taken from all such lists as aforesaid the names of all men who shall be described therein respectively as last aforesaid and the said sheriff or his deputy appointed as aforesaid shall prefix to such book the name of the court town of the jury district for which such lists shall have been prepared and to every name in such book its proper number beginning the numbers from the first name and continuing them in a regular arithmetical series down to the last name and shall cause the said several numbers to be written upon distinct pieces of parchment being all as nearly as may be of equal size and shape and having thereon respectively the name of the said court town and the word "special" and after all the said numbers shall have been so written shall put the same together by themselves in the said box with the name of the same court town and the words "Special jurors in use" painted thereon and shall there safely keep the same to be used for the purpose hereinafter mentioned and all men whose names are so copied into such book shall be called "special jurors" and shall serve on all special juries under this Act And the sheriff or his deputy appointed as aforesaid shall in like manner take from the said lists consecutively as aforesaid the names of all men who shall be described therein respectively otherwise than as last aforesaid and shall cause the names of all such men together with their
 respective

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Sheriff to make out
 jury books.
 6 Geo. IV. c. 50 s. 12.
 11 Vic. No. 20 ss. 9
 and 10.
 1 Pring 747.

6 Geo. IV. c. 50 s. 31.

31 VICTORIÆ No. 34. respective places of abode and addition to be fairly and truly copied into a book to be called the "Common jury book" and shall prefix to such book the name of the said court town and to every name in such book its proper number beginning the numbers from the first name and continuing them in a regular arithmetical series down to the last name and shall cause the said several numbers to be written upon distinct pieces of parchment being all as nearly as may be of equal size and shape and having thereon respectively the name of the said court town and the word "common" and after all the said numbers shall have been so written shall put them together by themselves into the said box with the name of the said court town and the words "Common jurors in use" painted thereon and shall there safely keep the same to be used for the purpose hereinafter mentioned and all men whose names are so copied into such last-mentioned book shall be called "common jurors" and shall serve on all common juries under this Act and every sheriff or his deputy appointed as aforesaid on quitting his office shall deliver the same to the succeeding sheriff or his deputy appointed as aforesaid and every jury book shall be so provided and prepared before the first day of June after such lists shall have been sent or delivered to the sheriff as aforesaid and shall be brought into use on that day and be used for one year then next following Provided always that if there shall at any time be more than one court town in the same bailiwick the sheriff or his deputy appointed as aforesaid shall keep the lists of men qualified and liable to serve as aforesaid within one jury district separate and apart from the list of men qualified and liable to serve as aforesaid within any other jury district and in that case shall by the means and in the manner aforesaid cause to be made separate jury books for every such jury district and the enactments herein contained with respect to the numbers parchments books and boxes aforesaid respectively shall be observed and obeyed with respect to the jury books of every such district and shall be applicable thereto.

Proviso for several jury districts in one bailiwick.

Jury list for new "court towns."
11 Vic. No. 20 s. 11.
1 Pring 748.

12. In case any assizes or any circuit court or court of general sessions of the peace shall hereafter be lawfully directed or appointed to be holden at any town other than those at which the same are now holden the clerk of petty sessions at such court town and the clerk of petty sessions at every other town or place within the jury district of such court town and all justices constables officers of police sheriff or his deputy appointed as aforesaid shall within such time as the Governor in Council shall order for that occasion only do and perform all such acts matters and things in and towards preparing collecting allowing sending and delivering the lists of men qualified and liable to serve as aforesaid and making out the jury books for every such jury district as are hereinbefore required to be ordinarily done at a different time or period and all such last-mentioned jury books shall be brought into use and the persons whose names shall be therein set down shall be liable to serve immediately after the same shall have been made out by the sheriff or his deputy appointed as aforesaid and the said last-mentioned books shall be used until new books shall have been prepared under the provisions hereinbefore contained.

Precepts.

Precepts.

31 VICTORIA No. 34.

13. The several writs of *venire facias juratores distringas juratores* and *habeas corpora juratorum* and the entry *jurata ponitur in respectu* shall not be necessary or used but it shall be lawful for the Supreme Court or a judge thereof or of a circuit court as the case may be to issue a writ rule side bar rule order or jury precept in that behalf and such precept may be in the form contained in the fourth schedule to this Act or to the like effect and every such writ rule order or precept shall be delivered by the registrar or associate or judge's clerk to the sheriff or other person to whom the same is directed a sufficient number of days before the same is returnable and in case common jurors are thereby required shall require the sheriff or his deputy appointed as aforesaid to summon not less than thirty-six men and in case special jurors are thereby required shall command the sheriff or his deputy appointed as aforesaid to summon not less than four times the number of men to be empanelled.

Jury process in general.
15 & 16 Vic. c. 76 s. 104.
15 & 16 Vic. c. 76 s. 107.
15 & 16 Vic. c. 76 s. 105.
Fourth schedule.
15 & 16 Vic. c. 76 s. 108.
11 Vic. No. 30 ss. 12 and 13.
1 Pring 748.

14. Provided always that the Supreme Court and all circuit courts courts of assize *nisi prius* oyer and terminer and gaol delivery and courts of general sessions of the peace and district courts shall respectively have and exercise the same power and authority as they or the like courts in England have heretofore had or exercised in making any award or order orally or otherwise for the return of a jury for the trial of any issue before any of such courts respectively or for the amending or enlarging any such panel as hereinafter mentioned and the return to every such award or order shall be made in the manner heretofore used and accustomed in such courts respectively in England save and except that the jurors so returned shall be qualified according to this Act.

Supreme Courts courts of assize &c. to exercise powers of like courts in England.
11 Vic. No. 20 s. 19.
1 Pring 750.

15. Upon receipt of any such writ rule order or jury precept the sheriff or his deputy appointed as aforesaid shall by some notice affixed in legible characters in some public and conspicuous part of the office of such sheriff appoint some future day and some hour on that day not earlier than eleven o'clock in the forenoon nor later than three o'clock in the afternoon at which he or his deputy will in such office proceed to draw the names of persons to be summoned to serve as jurors at the court for which such precept shall have been issued and the said sheriff or his deputy appointed as aforesaid at the time so named and in his said office and in the presence of all persons who may choose to attend shall in case special jurors are to be summoned cause that one of the said boxes for the proper jury district on which the words "Special jurors in use" are painted to revolve on its axle for the space of one minute at the least and immediately after the expiration of that time shall draw out of the said box as many of the said parchments as are equal to the number of jurors intended to be summoned one after another and shall as each parchment is drawn refer to the corresponding number in the special jury book of the then current year and read aloud the name designated by such number and then and there write the said number and also such name with the place of abode and addition on a panel to be signed by him and sealed with his seal of office and after having so written the same on such panel shall keep the said parchments which shall have been so drawn out as aforesaid

Selection of jurors to be summoned.
11 Vic. No. 20 s. 14.
1 Pring 749.

31 VICTORIA No. 34. aforesaid until after the said precept is returnable and if any juror whose name may be on the said panel does not attend in pursuance of the summons hereinafter mentioned shall at once return the said parchment bearing the number by which the name of such juror is designated as aforesaid to the said box and shall put the residue of the said parchments or (if all such jurors shall attend as aforesaid) the whole of the said parchments into that one of the said boxes for the same district on which the words "Special jurors in reserve" are painted there to remain until the remainder of the said parchments shall have been drawn out of the first-mentioned box in the manner aforesaid and then to be returned to such box for the purpose of being again resorted to according to the mode of proceeding hereinbefore described. And if in any case it shall so happen that the whole number of jurors cannot be obtained from the special jury book in such case such a number of names from the common jury book for the same district of the then current year in addition to those already taken from the said special jury book as shall be required to make up the proper number shall be taken in the same manner as is hereinbefore described with respect to special juries and the said last-mentioned names shall in such case be equally deemed and taken to be those of special jurors. And in case common jurors are to be summoned the same form and mode of proceeding *mutatis mutandis* shall be observed as in case of a special jury. Provided always that if there shall be no jury book in existence for the current year it shall be lawful to take the names of jurors from the jury book for the preceding year in the manner aforesaid and the jurors contained in the said panel shall be the jurors as the case may be to try all issues and inquire of all damages at the court to which they shall be summoned and all such proceedings may be had and taken before such juries in like manner and with the like consequences in all respects as before any jury summoned in pursuance of any writ or precept before the coming into operation of this Act and it shall not be necessary for the jury on any trial or inquiry to assess any costs or damages by way of costs nor shall any entry of such assessment be hereafter made on the record.

Panel to be kept in the sheriff's office.

6 Geo. IV. c. 50 s. 19.

16. A copy of the said panel shall three days before the said precept is returnable be delivered or caused to be delivered by the sheriff or his deputy appointed as aforesaid to the clerk of petty sessions at the court town who shall during such three days keep the same in his office for inspection and a copy of such panel shall be delivered by the sheriff or his deputy appointed as aforesaid or by the said clerk to any person requiring the same on payment if such panel shall contain the names of not more than sixteen men of one shilling or if such panel shall contain the names of more than that number of men of two shillings.

View and Inspection.

Mode of obtaining view.

15 & 16 Vic. c. 76

s. 11.

11 Vic. No. 20 s. 30.

1 Pring 752.

17. A writ of view shall not be necessary or used but in any case either civil or criminal or on any penal statute depending in any court whether the view is to be had by a common or special jury it shall be sufficient to obtain a rule or order of such court directing

a view to be had and the sheriff or his deputy appointed as aforesaid upon request shall deliver to either party the names of the viewers.

18. The rule or order shall contain the usual terms and order the sheriff or his deputy appointed as aforesaid to have certain of the jurors named in such rule or order or in the panel thereto annexed not less in number than one-half of the number of jurors who are to try the case (who shall be consented to by the parties or if they cannot agree shall be nominated by the sheriff or his deputy appointed as aforesaid) who shall then and there have the place in question (the view of which place may be proper and necessary in order to their better understanding the evidence that may be given on such trial) shown to them by two persons in the said rule or order named to be appointed by the court. The proceedings upon such rule or order shall be the same as the proceedings heretofore had in England under a writ of view or as near thereto as may be and the sheriff his deputy or other minister who is to execute any such rule or order by a special return on the same shall certify that the view hath been had according to the command of the same and shall certify the names of the viewers and upon the day and at the place named in the jury precept for the appearance of the jurors thereby required to be summoned shall deliver the said rule or order with the said indorsement thereon to the proper officer of the court for the purpose of such viewers or inspectors being called as jurymen on the trial or inquiry.

19. In any case wherein a rule or order for a view or inspection shall have been obtained it shall be lawful for the judge before whom the trial or inquiry is to be had and he is hereby required on the application of the party obtaining such rule or order to appoint such trial or inquiry to take place during the attendance and service of the jurors named in the panel in which the viewers or inspectors are included and where a view or inspection shall have been had in any case those men who shall have had the same or such of them (if any) as shall appear upon such trial or inquiry shall be first sworn and so many only shall be added to them as shall after all defaulters and challenges allowed make up a full jury and in every trial or inquiry the court or judge may order such inspection as aforesaid by the jury even after the evidence on one or both sides has been closed if in their or his opinion such a course be necessary for the attainment of justice.

Formation of Juries.

20. When the said numbers and such names with their respective places of abode and addition shall have been written on such panel as aforesaid the sheriff or his deputy appointed as aforesaid shall forthwith issue a summons in the form contained in the fifth schedule to this Act to every juror whose name shall be on the said panel and the said summons shall be delivered to every such juror or shall be left at his usual or last known place of abode at least six clear days before the attendance of such juror is required.

21. Upon the day and at the place named in every such writ rule order or jury precept for the appearance of the jurors thereby required to be summoned the sheriff or his deputy appointed as aforesaid

31 VICTORIA No. 34.
Viewers how appointed.
6 Geo. IV. c. 53 s. 23.
11 Vic. No. 20 s. 30.
1 Pring 752.
15 & 16 Vic. c. 76 s. 11-4.

6 Geo. IV. c. 50 s. 23.

Viewers to be on the jury.
6 Geo. IV. c. 50 s. 22.
See Evidence Act of 1867 s. 75.

6 Geo. IV. c. 50 s. 24.

Sheriff to summon the jurors.
6 Geo. IV. c. 50 s. 25.
11 Vic. No. 20 s. 15.
1 Pring 749.

Sheriff to return precept and panel with cards.

31 VICTORIA No. 34. aforesaid shall in open court deliver or cause to be delivered the said writ rule order or jury precept to the proper officer of such court and shall annex to the said writ rule order or precept the said panel and shall also then and there furnish to the same officer the names of the said jurors with their respective places of abode and addition written on separate pieces of card being all as nearly as may be of equal size and shape and such officer shall thereupon in open court put the said pieces of card together in a box to be provided for that purpose and shall there keep the same to be used as hereinafter mentioned.

Mode of balloting for jury at trials and inquiries.

6 Geo. IV. c. 50 s. 26.

11 Vic. No. 20 s. 23.

1 Pring 731.

4 Vic. No. 28 s. 4.

1 Pring 738.

22. When any issue joined on any indictment or in any civil action suit or proceeding shall be brought on to be tried in any court the proper officer thereof shall in open court draw out of the said box four or twelve (as the case may be) of the said cards one after another and if any of the men whose names shall be so drawn shall not appear or shall be challenged then such further number until the number of jurors or assessors to be sworn be drawn who shall appear and after all just causes of challenge allowed shall remain as fair and indifferent and the four or twelve men (as the case may be) so first drawn and appearing and approved as indifferent shall be the jury to try the said issue and their names shall be kept apart by themselves until such jury shall have given in their verdict and the same shall have been recorded or until such jury shall by consent of the parties or by leave of the court be discharged and then the same names shall be returned to the box there to be kept with the other names remaining at that time undrawn and so *toties quoties* as long as any issue remains to be tried. Provided always that if any such issue shall be brought on to be tried before the jury in any other issue shall have brought in their verdict or been discharged it shall be lawful for the court to order four or twelve (as the case may be) of the residue of the said cards not containing the names of any of the jurors who shall not have so brought in their verdict or been discharged to be drawn in such manner as is aforesaid for the trial of the issue which shall be so brought on to be tried. Provided also that where no objection shall be made on behalf of the Queen or any other party it shall be lawful for the court to try any issue with the same jury that shall have previously tried or been drawn to try any other issue without their names being returned to the box and redrawn or to order the names of any men on such jury whom both parties may consent to withdraw or who may be justly challenged or excused by the court to be set aside and other names to be drawn from the box and to try the issue with the residue of such original jury and with such men whose names shall be so drawn and who shall appear and be approved as indifferent and so *toties quoties* as long as any issue remains to be tried and the same form and manner of proceeding shall and may be observed and adopted in every inquiry of damages in civil matters.

This Act to apply to elisors as well as sheriffs.

23. Where any writ rule order or jury precept or any award or order for returning a jury for the trial of any issues or the inquiry of any damages shall be directed to any elisor or other minister he shall have free access to the jury books and parchments aforesaid and shall execute and obey the said precept award or order in the same manner as the sheriff or his deputy appointed as aforesaid is by this Act required

required to execute and obey the same and shall do and perform all such other acts and duties in reference thereto and be subject and liable to the same penalties forfeitures and proceedings as any sheriff in the like case offending is subject and liable to by virtue of this Act.

24. The trial of every issue joined upon any indictment shall except as hereinafter mentioned be had by a jury of twelve men taken from the common jury book of the jury district in which such trial shall be had and the trial of issues and the inquiry of damages in all civil actions suits or proceedings in the Supreme Court or in any circuit court shall where a jury is required except as hereinafter mentioned be had by a jury of four men taken from the special jury book of the same district.

Criminal issues to be tried by common jury of twelve and civil issues by special jury of four.
11 Vic. No. 20 s. 17.
1 Pring 749.
11 Vic. No. 20 s. 20.
1 Pring 750.

25. When any person is indicted for high treason or misprison of treason in any court whatsoever a list of the petit jury with the christian and surname written at full length and with the true place of abode title quality profession calling or business of every such juror shall be given to the party so indicted ten days before the arraignment and in the presence of two or more credible witnesses.

List of jurors to be delivered ten days before trial for treason.
7 Anne c. 21 s. 11.

26. Upon all inquests to be taken before the Supreme Court or at any assizes or before any circuit or district court or court of general sessions of the peace wherein the Queen is a party howsoever it be it shall be lawful for the Supreme Court on application to be made to such court on behalf of Her Majesty or by or on behalf of any defendant or person accused of any indictable offence whether any indictment shall have been found or not to order that the trial of any issues joined upon any indictment which has been or shall be found against the person to be named in such order at the said court or at any assizes or other court hereinbefore mentioned shall be tried by a special jury of twelve men and in that case the proper officer shall issue a jury precept accordingly. Provided that any defendant or other person accused shall serve a notice of such application upon the Attorney-General or other prosecutor at least four clear days before the time of his making the same.

Special jury in criminal case.
11 Vic. No. 20 s. 18.
1 Pring 750.

27. Notwithstanding anything hereinbefore contained the party giving notice of trial or inquiry in any case may procure such trial or inquiry to be had by a special jury of twelve men upon entering the same for trial or inquiry by such jury and the other party may also procure the trial or inquiry to be had by such jury upon giving notice to the opposite party of his intention that it shall be so had within one day next after notice of trial or inquiry and upon paying to the proper officer of the court the sum of ten pounds for fees to jurors and in that case the cause shall be entered or if already entered shall be transferred for trial or inquiry accordingly. Provided that the court or judge may at any time order that the trial or inquiry shall be had by a special jury of twelve men upon such terms as they or he shall think fit.

Special juries of twelve in civil cases.
11 Vic. No. 20 s. 21.
1 Pring 750.

15 & 16 Vic. c. 76.
s. 109.

28. The party who shall procure any trial or inquiry to be had by a special jury of twelve men shall pay all the expenses occasioned by the trial or inquiry by the same and shall not have any further or other allowance for the same upon taxation of costs than such party would be entitled to in case the trial or inquiry had been

Costs of special juries of twelve.
11 Vic. No. 20 s. 33.
1 Pring 753.

6 Geo. IV. c. 50 s. 34.

31 VICTORIÆ No. 34. been had by a jury of four men as hereinbefore directed unless the judge before whom the trial or inquiry comes on to be had shall immediately after the verdict or nonsuit certify under his hand upon the back of the record that the same cause was proper for a special jury of twelve men.

Remedy for delay by special jury.

15 & 16 Vic. c. 76 s. 111.

29. Where the defendant in any case except replevin or the plaintiff or defendant in replevin not being the party who shall have served notice of trial procures the cause to be entered for trial or inquiry by a special jury of twelve men the court or a judge if satisfied that such entry is procured for the purpose of delay may order that the trial or inquiry be had by a special jury of four men or make such other order as to the trial or inquiry as such court or judge shall think fit.

Discharge of Jury.

Discharge of jury.

11 Vic. No. 20 s. 29.
1 Pring 752.

30. Where in any case not being a criminal case a jury shall have remained six or more hours in deliberation and shall not agree as to the verdict to be given the jurors of such jury may be discharged by the court from giving any verdict and such proceedings may thereupon be taken anew as if no trial or inquiry had been commenced before the jury so discharged Provided always that (if at the time of such discharge the court thinks fit so to order) another trial or inquiry may forthwith or at some other time during the same sittings or assizes be commenced and proceeded with as if such first-mentioned trial or inquiry had not been commenced.

Challenges.

Challenge for want of qualification exemption.

6 Geo. IV. c. 50 s. 27.
11 Vic. No. 20 s. 24.
1 Pring 751.

31. If any man shall be returned as a juror for the trial of any issue civil or criminal or the inquiry of damages in any court who shall not be qualified according to this Act the want of such qualification shall be good cause of challenge and he shall be discharged upon such challenge if the court shall be satisfied of the fact and if any man returned as a juror for the trial of any such issue or the inquiry of any such damages shall be qualified in other respects according to this Act the want of freehold shall not on such trial or inquiry be accepted as good cause of challenge either by the Crown or by the party nor as cause for discharging the man so returned upon his own application but no justice of the peace shall be summoned or empanelled as a juror to serve on any common jury and no challenge shall be taken to any such panel as aforesaid for want of a Knight's being returned in such panel nor any array quashed by reason of any such challenge as last aforesaid any law custom or usage to the contrary notwithstanding.

6 Geo. IV. c. 50 s. 48.

6 Geo. IV. c. 50 s. 28.

Either party may pray a tales.

6 Geo. IV. c. 50 s. 37.
11 Vic. No. 20 s. 23.
1 Pring 751.

32. Where a full jury shall not appear before any court or where after such appearance by challenge of any of the parties the inquest is likely to remain untaken for default of jurors every such court upon request made for the Queen by any one thereto authorised or assigned by the court or on request made by either party or their respective attorneys in any action or suit whether popular or private shall command the sheriff or his deputy appointed as aforesaid to name and appoint as often as need shall require so many of such other able men of the jury district then present as shall make up a full jury and

and the sheriff or his deputy appointed as aforesaid shall at such command of the court return such men duly qualified as shall be present or can be found to serve on such jury and shall add and annex their names to the said panel and the Queen by any one so authorised or assigned as aforesaid and all and every the parties aforesaid shall and may in each of the cases aforesaid have their respective challenges to the jurors so added and annexed and the court shall proceed with those jurors who were before empanelled together with the talesmen so newly added and annexed as if all the said jurors had been returned upon the jury precept awarded.

33. In all inquests to be taken before any court wherein the Queen is a party howsoever it be notwithstanding it be alleged by them that sue for the Queen that the jurors of those inquests or some of them be not indifferent for the Queen yet such inquests shall not remain untaken for that cause but if they that sue for the Queen will challenge any of those jurors they shall assign of their challenge a cause certain and the truth of the same challenge shall be inquired of according to the custom of the court and it shall be proceeded to the taking of the same inquisitions as it shall be found if the challenges be true or not after the discretion of the court.

34. In all civil inquests to be taken before any court the plaintiff and defendant respectively shall be admitted to challenge peremptorily to the number of one-half of the jury and every person arraigned for any treason shall be admitted to challenge peremptorily to the number of twenty-three and every person arraigned for any capital felony shall be admitted to challenge peremptorily to the number of eighteen and every person arraigned for any other felony or piracy or for misdemeanor shall be admitted to challenge peremptorily to the number of twelve and if any person indicted shall challenge peremptorily a greater number of the men returned to be of the jury than such person is allowed by law so to challenge in any of the said cases every peremptory challenge above the numbers aforesaid respectively shall be void and the trial or inquiry shall proceed as if no such challenge had been made. Provided always that where there are several defendants in any civil inquest who have not pleaded by the same attorney and where several persons charged with the same offence shall be put upon trial together and such defendants or persons shall not consent to join in their challenges the proper officer of the court shall in every such case draw out of the said box a sufficient number of such cards to permit such of several defendants as shall not have pleaded by the same attorney or as shall not have pleaded at all and each of such persons to exercise his right of peremptory challenge to the numbers aforesaid respectively as and for each of such several defendants or persons.

35. On the prayer of any alien indicted for any felony piracy or misdemeanor the sheriff or his deputy appointed as aforesaid shall by command of the court return for one-half of the jury a competent number of aliens if so many there be in the town or place where the trial is had and if not then so many aliens as shall be found in the same town or place if any and no such alien juror shall be liable to be challenged

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Crown inquests not to remain untaken by reason of challenges.
6 Geo. IV. c. 50 s. 29.
11 Vic. No. 20 s. 24.
1 Pring 751.

Peremptory challenges.
6 Geo. IV. c. 50 s. 29.
11 Vic. No. 20 s. 24.
1 Pring 751.

6 Geo. IV. c. 50 s. 50.

Jury *de medietate linguae*.
28 Ed. III. c. 13 s. 2.
6 Geo. IV. c. 50 s. 47.

31 VICTORIA No. 34. challenged for want of freehold or of any other qualification required by this Act but every such alien may be challenged for any other cause in like manner as if he were qualified by this Act.

Penalties.

Attendance and liability of jurors.

6 Geo. IV. c. 50 s. 54.

11 Vic. No. 20 s. 39.

1 Pring 755.

36. The proper officer of the court on delivery to him of such panel as aforesaid shall in open court call aloud the names of the jurors on such panel one after another and if any man having been duly summoned to attend on any kind of jury in the Supreme Court or any court of assize *nisi prius* oyer and terminer or gaol delivery or court of general sessions of the peace or circuit court shall not attend in pursuance of such summons or being thrice called shall not answer to his name or if any such man or any talesman after being called shall be present but not appear or after his appearance shall wilfully withdraw himself from the presence of the court the court shall set such fine upon every such man or talesman so making default as the court shall think meet and where any viewer or inspector having been duly summoned to attend on a jury shall make default as aforesaid the court is hereby authorised and required to set upon such viewer a fine to the amount of ten pounds at the least and as much more as the court under the circumstances of the particular case shall think proper and if any man having been duly summoned and returned to serve as a juror upon any inquest or inquiry before any sheriff or his deputy appointed as aforesaid or commissioners shall not after being openly called three times appear and serve as a juror every such sheriff or his deputy appointed as aforesaid and all such commissioners respectively are hereby authorised and required to impose a fine upon every man so making default as they shall respectively think fit not exceeding five pounds.

11 Vic. No. 20 s. 38.

1 Pring 754.

Liability of sheriff for summoning unqualified persons.

11 Vic. No. 20 s. 37.

1 Pring 754.

37. Every sheriff or his deputy appointed as aforesaid shall be and is hereby indemnified for empanelling and returning any man named in the jury book although he may not be qualified or liable to serve on juries and if any sheriff shall wilfully empanel and return any man to serve on any jury such man's name not being inserted in the jury book for the current year or if there shall be no jury book in existence for the current year then in the jury book for the preceding year or if any associate prothonotary clerk or other officer or minister of any court shall wilfully record the appearance of any man so summoned and returned who did not really appear in every such case the court shall and may upon examination in a summary way set such fine upon such sheriff or his deputy appointed as aforesaid associate prothonotary clerk or other officer or minister offending as the court shall think meet.

Penalty for excusing jurors or summoning men not named in the summons.

6 Geo. IV. c. 50 s. 43.

11 Vic. No. 20 s. 37.

1 Pring 754.

38. No sheriff elisor bailiff or other officer or person whatsoever shall directly or indirectly take or receive any money or other reward or promise of money or other reward to excuse any man from serving or from being summoned to serve on juries or under any such color or pretence and no bailiff or other officer appointed by any sheriff or elisor to summon juries shall summon any man to serve other than those whose names are specified in the summons signed by such sheriff or elisor and if any sheriff elisor bailiff or other officer shall wilfully transgress in any of the cases

cases aforesaid or shall summon any juror less than eight clear days 31 VICTORIA No. 34. before the day on which he is to attend except in the cases hereinbefore excepted the Supreme Court court of assize *nisi prius* oyer and terminer gaol delivery or district court or court of general sessions of the peace within whose jurisdiction the offence shall have been committed may and is hereby required on examination and proof of such offence in a summary way to set such a fine upon every person so offending as the court shall think meet according to the nature of the offence.

39. It shall not be lawful either for the Queen or any one on her behalf or for any party in any case whatsoever to commence or prosecute any writ of attaint against any juror for the verdict by him given or against the party who shall have judgment upon such verdict and no inquest shall be taken to inquire of the concealments of other inquests but all such attaints and inquests shall henceforth cease become void and be utterly abolished any law statute or usage to the contrary notwithstanding. Attaint abolished.
6 Geo. IV. c. 50

40. Notwithstanding anything hereinbefore contained every person who shall be guilty of the offence of embracery and every juror who shall wilfully or corruptly consent thereto shall and may be respectively proceeded against and be punished by fine and imprisonment in like manner as every such person or juror might have been before the coming into operation of this Act. Embracery punished
6 Geo. IV. c. 50 s. 61.
11 Vic. No. 20 s. 41.
1 Pring 755.

41. If any clerk of petty sessions within the meaning of this Act shall refuse or neglect to issue and deliver his warrant as hereinbefore directed to one or more constables or officers of police or shall in like manner refuse or neglect to deliver with the respective warrants such a number of the forms of return and notice as he shall *bonâ fide* deem sufficient or to deliver such additional number as may be demanded of him by any constable or officer of police as aforesaid (provided he hath such additional number in his possession) or in case of not so having them shall refuse or neglect to apply forthwith to the proper person for such additional number and to deliver the same to the party so demanding within three days after his receipt thereof or shall refuse or neglect to attend at any such petty sessions or such adjournment thereof as aforesaid or to receive any list there tendered by the justices present or to send or deliver the same to the sheriff or his deputy appointed as aforesaid at the time and in the manner hereinbefore directed or shall make any alteration in any such list after his receipt thereof or if any person shall before the expiration of the first three weeks in March in any year give notice in writing to any such clerk of petty sessions as aforesaid of the christian and surname written at full length with the true place of abode title quality profession calling or business and the nature of the qualification of any man qualified and liable to serve as aforesaid and the name of such man shall not be afterwards inserted in the said list according to this Act every such clerk offending in any of the foregoing cases shall for every such offence forfeit a sum not exceeding ten pounds nor less than forty shillings. Penalty on clerk of
petty sessions for
neglect.
6 Geo. IV. c. 50 ss.
44 and 46.
11 Vic. No. 20 s. 35.
1 Pring 754.

42. If any person to whom any question may be put by any such constable or officer of police as aforesaid relating to the said lists or to the christian or surname place of abode title quality profession calling or business Penalty on person
refusing inspection of
rates or not answering
questions.

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business and the nature of the qualification of any man shall not truly answer such question or if any person having the custody of any valuation rate or assessment for any city borough town or other place within any jury district shall refuse to allow any such constable or officer of police as aforesaid upon due request to inspect any such valuation rate or assessment and take from thence such names as aforesaid or shall refuse to allow the said petty sessions or any justice upon due request to inspect or make extracts from any such valuation rate or assessment for the purposes hereinbefore mentioned every person offending in any of the foregoing cases shall for every such offence forfeit a sum not exceeding ten pounds nor less than five pounds.

Penalty on constables
for neglect.

6 Geo. IV. c. 50 s. 45.

11 Vic. No. 20 s. 35.

1 Pring 754.

43. If any constable or officer of police within the meaning of this Act shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by this Act so that the same shall not be made out at the time and in the manner hereinbefore directed or shall wilfully omit out of such list any man whose name ought to be inserted therein or shall wilfully insert therein the name of any man who ought to be omitted or shall take any money or other reward for omitting or inserting any man whatsoever or shall wilfully insert therein a wrong description of the name place of abode title quality profession calling business or the nature of the qualification of any man or shall refuse or neglect in case the number of forms of return or notice delivered by the clerk of petty sessions shall be insufficient to apply to him for a sufficient number so that the list may be made out at the time and in the manner hereinbefore directed or shall refuse or neglect to fix such notice as hereinbefore required upon or near the principal door of any church chapel or other public place of religious worship within the limits mentioned in the warrant of the clerk of petty sessions on any of the Sundays on which the same ought to be so fixed or shall refuse to allow any inhabitant of the jury district to inspect or peruse such list or a true copy thereof gratis at any reasonable time during the three weeks hereinbefore mentioned or shall neglect to produce such list at such petty sessions as aforesaid or to answer upon oath such questions touching the same as shall there be put or to attend at such petty sessions or any such adjournment thereof as aforesaid every such constable or officer of police offending in any of the foregoing cases shall for every such offence forfeit a sum not exceeding ten pounds nor less than forty shillings and the justice before whom such offender shall be convicted of any such offence of wrongful insertion or omission shall forthwith in writing under his hand certify the same to the sheriff or his deputy appointed as aforesaid by whom the list in which such wrongful insertion or omission shall have occurred is by this Act required to be kept and such sheriff or his deputy appointed as aforesaid shall correct the special or common jury book as the case may be according to such certificate.

Liability of justices.

11 Vic. No. 20 s. 36.

1 Pring 754.

44. Every justice of the peace who shall have been summoned as hereinbefore directed to attend at any special petty sessions for correcting and allowing any jury list who shall fail or neglect to attend such special petty sessions without any reasonable cause for such non-attendance shall be liable to a fine not exceeding the sum of ten pounds

pounds which shall be summarily imposed by the Supreme Court of ^{31 VICTORIE No. 34.} the colony upon the motion of the Attorney-General and upon the fact of such non-attendance being duly proved on affidavit to the satisfaction of the said court and the clerk of the bench shall at the said special petty sessions make an entry in writing of the name of every justice of the peace residing in the jurors' district and so summoned as aforesaid distinguishing those that attend and those that were absent at the correction and allowance of the said lists as aforesaid and shall at the final adjournment of the said special petty sessions transmit a certificate thereof to the Attorney-General verified by declaration which certificate shall be taken to be *prima facie* proof of the non-attendance of the justices therein stated to have been absent from the said special petty sessions.

45. If any sheriff or his deputy appointed as aforesaid shall make or cause or suffer to be made any alteration whatsoever in any jury book except in consequence of the conviction of the constable or officer of police hereinbefore provided for or if any sheriff or his deputy appointed as aforesaid shall neglect to provide or prepare any jury book in the manner and before the time hereinbefore prescribed or shall wilfully write or cause or suffer to be written in any jury book the name of any person not qualified or shall wilfully omit thereout the name of any person duly qualified as a special or common juror (as the case may be) or shall neglect to write or cause to be written the several numbers contained in any such jury book upon distinct pieces of parchment in the manner aforesaid before such jury book shall be brought into use or shall substract or destroy or by any default or neglect lose any of the said pieces of parchment or shall neglect or refuse upon discovery of such loss to supply the same within five days or if any sheriff shall refuse or neglect to make or keep for inspection or to deliver as aforesaid a copy of the panel in the cases hereinbefore provided for or shall refuse or neglect within seven days after the next succeeding sheriff shall have entered upon office to deliver over to him all the jury books and lists that shall have been made or prepared within four years then next preceding whether in the time of his shrievalty or in that of any of his predecessors every such sheriff offending in any of the said cases shall for every such offence forfeit the sum of twenty pounds.

46. In every such case of trial or assessment as aforesaid and in every other case whatsoever of trial by jury under the provisions of this Act when no other mode of proceeding is by this Act specially provided the jurors and jury and every assessment or trial by them shall as far as may be practicable be subject to the same rules and manner of proceeding as would in England be observed in an action at law in the courts of Westminster or on a trial at *nisi prius*.

47. Every juror summoned in pursuance of any precept as aforesaid who shall attend the Supreme Court or any circuit court district court or court of general or quarter sessions of the peace shall for every day during his attendance upon such court (whether he shall have actually served upon a jury or not) be entitled to receive a compensation for such attendance at the rates mentioned in the schedule hereto annexed marked six Provided however that in all cases in which

31 VICTORIA No. 34. there may be a regular steam conveyance or the passage can be conveniently made wholly or in part by water the allowance of such portion of the journey as shall be or might have been performed by water shall be limited to the actual amount of the steerage or cabin passage money payable according to the station in life of the juror Provided also that every talesman serving with such jurors shall be entitled to the same compensation as a juror residing within five miles of the said court.

Fund for such pay
in civil causes.
11 Vic. No. 20 s. 32.
1 Pring 753.

48. In every action at law there shall be paid by the plaintiff into the hands of the prothonotary (to be by him paid over to the sheriff) on entering the cause for trial in every case of assessment or damages the sum of one pound and in every case of a trial by a jury of four the sum of two pounds and in every case of a trial by a common jury of twelve men the sum of three pounds and in every case of trial by a special jury of twelve men the sum of six pounds which said several amounts shall be allowed as costs in the cause Provided that when the order for such jury of twelve shall have been made on the application of the defendant the said sum of three pounds or six pounds as the case may be shall be paid by such defendant on the making of the order into the hands of the prothonotary (to be by him paid over to the sheriff) or such order shall lapse and not take effect and the said sums together with the amount of all fines on jurors shall form a fund in the hands of the sheriff for paying expenses of civil jurors as aforesaid and shall be applied accordingly for that purpose and be accounted for by him in like manner as other public moneys are directed to be accounted for by the sheriff.

The like in certain
cases.
15 Vic. No. 3 s. 2.
1 Pring 756.

49. Where the jury shall have sat on the same trial in any civil case more than three days it shall be lawful for the presiding judge to direct the prevailing party to pay them severally (or to the sheriff or his deputy for their use) in respect of the fourth and every subsequent day such additional sum or sums (over and above the amount to which they shall be entitled under the schedule) as the said judge shall under the circumstances think reasonable and proper the same to be allowed eventually as costs in the cause.

Jury money.
1 Vic. No. 20 s. 32.
1 Vic. No. 3 s. 3.
1 Pring 756.

50. In every case where the amount required by the section last but one preceding shall have been paid to the prothonotary and no trial or assessment shall eventually be had the amount so paid shall on demand be returned to the party having paid the same.

Commencement and Short Title.

Short Title of Act.

51. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as "*The Jury Act of 1867.*"

SCHEDULES.

SCHEDULE I.

Jury District } to wit.
of

To A. B. a constable or officer of police within the said district.

See Section 5.

These are to require you in Her Majesty's name to make out before the first Sunday in March next a true list in writing in the form hereunto annexed containing the names
of

of all men qualified as hereinafter mentioned and residing within thirty miles of the court house of aforesaid *[or (if there are more than one petty sessions in the district or if any arrangements has been made between two or more clerks)]* the several places mentioned on the back of this warrant] and when you have made out such list you are to sign the several notices hereunto annexed and on the first two Sundays in the said month of March you are to fix one of those notices upon or near the principal outer door of every church chapel and other public place of religious worship within the limits aforesaid stating in the proper blanks in such notices the time and the nearest time or place to which petty sessions are holden and you are to keep the said list or a true copy thereof to be inspected or perused by any of the inhabitants of the said district at any reasonable time during the first three weeks of the said month of March without any fee or reward And I do further require you to appear personally at the petty sessions to be holden at

31 VICTORIA No. 34.

on Friday the day of April next at o'clock in the noon then and there to produce the said list and to answer on oath all questions touching the same which may then and there be put to you.

If you have not a sufficient number of the said forms of return or of the said notices you must apply to me for more otherwise you will be liable to a penalty and if you think proper you may during the month of February next apply to any person who has the custody of any valuation rate or assessment in any city borough town or other place within the said district for leave to inspect such valuation rate or assessment and to take therefrom the names of any men qualified and liable to serve on juries therein and you may during the same month make inquiry of any person as to the name place of abode business or qualification of any one supposed by you to be liable to serve on juries and any person refusing such inspection or not truly answering such inquiry may be fined.

Every man except as hereinafter excepted between the ages of twenty-one years and sixty years who shall have in his own name or in trust for him real estate of the clear value of two hundred pounds or who shall have in his own name or in trust for him the clear yearly income of fifty pounds in real estate or who shall have the clear yearly income of one hundred pounds in lands held by lease or leases for the absolute term of twenty-one years or more or who being the occupier of any land shall be rated or assessed in respect thereof to any rate or duty whatsoever on an annual value of not less than twenty-five pounds or who shall hold any land as tenant thereof to any other person at a rent of not less than thirty pounds for the year or in that proportion for any period less than a year is qualified and liable to serve on juries.

You must omit from the said list all executive councillors all members of the legislature all judges of courts whether of record or otherwise all chairmen of general sessions all stipendiary magistrates all official assignees in bankruptcy or insolvency all clergymen in holy orders all persons who shall teach or preach in any religious congregation and shall follow no secular occupation except that of a schoolmaster all schoolmasters all managers cashiers accountants and tellers respectively employed as such in any bank all barristers-at-law actually practising and all officers and servants of any such court actually exercising the duties of their respective offices or places all coroners gaolers and keepers of houses of correction all physicians surgeons apothecaries chemists and druggists duly qualified and in actual practice all officers in Her Majesty's navy or army on full pay every member of any corps of volunteers whom the Governor in Council shall have released in this behalf and all masters of vessels actually trading and all pilots licensed under any Act now or hereafter to be in force for the regulation of pilots in any port all officers of customs and police all sheriffs and bailiffs and their officers or assistants all constables all persons holding any office or employment in or under any department of the public service the mayor aldermen councillors town clerk and other officers and servants of any municipal corporation all household officers and servants of the Governor all postmasters and clerks of petty sessions and all inspectors of schools.

Given under my hand at
day of January 186 .

in the said district this

O.P.
Clerk of Petty Sessions.

SCHEDULE II.

*List of men within the jury district of**liable to serve on juries.*

See section 5.

Christian and surname at full length.	Residence. In towns add the name of the street and numbers of the houses.	Title quality profession calling or business.	Nature of qualification.
Adams John ...	12 Queen street ...	Esquire ...	Real estate
Bowles James ...	44 George street ...	Grocer ...	Lease of land
Carden Henry ...	Ipswich road South Brisbane	Auctioneer ...	Occupier
Wilson Thomas ...	10 Brunswick street Fortitude Valley	Broker ...	Ratepayer

SCHEDULE III.

Jury List.

See sections 5 and 7.

Notice is hereby given that a list of men residing within thirty miles of the town of _____ and qualified and liable to serve on juries at that town has been made out and may be inspected and perused at my place of abode hereunder described at any time during the first three weeks of this present month.

All objections to the said list will be heard by the justices of the peace in petty sessions on Friday the _____ day of April next at the hour of _____ o'clock in the _____ noon at _____ where the said list will then be produced by me in order that all errors and omissions therein may be corrected.

Dated this _____ day of March 186 _____.

A. B.

SCHEDULE IV.

To the Sheriff of _____

See section 13.

Pursuant to the Act in such case made and provided you are hereby required that you cause to come before the [insert the style of the court] to be holden at the court-house at _____ on [here insert the day of the week] the _____ day of _____ now next [or instant] not less than _____ nor more than _____ good and lawful men of the jury district of _____ aforesaid duly qualified according to law as common (or special) jurors to make a jury of the country for all such matters as shall be then and there required of them in that behalf and that you have then there this precept with a panel annexed thereto containing the names of those jurors as by law is required of you.

Dated this _____ day of _____ A. D.

C. D. (J.) or By the Court,
A. B. Registrar [or Associate].

SCHEDULE V.

To Mr. _____

See section 20.

In obedience to a jury precept to me directed I do hereby require you to appear and serve as a juror at the Supreme [or Circuit or District] Court or at the assizes [or sessions] to be holden at _____ on (Monday) the _____ day of _____ next [or instant] at ten o'clock in the forenoon of that day and you are to attend the said court from day to day until you shall be discharged by the said court.

Given under my hand this _____ day of _____

Sheriff.

SCHEDULE

SCHEDULE VI.

31 VICTORIA No. 34.

- | | s. | d | |
|---|----|---|---------------------|
| 1. Jurors attending under a general jury precept— | | | |
| If within three miles of the court per diem | 2 | 6 | 15 Vic. No. 3. |
| If above three but not exceeding five miles per diem | 4 | 0 | Schedule. |
| If above five miles per diem | 6 | 0 | 1 Pring 759. |
| And for every mile of distance beyond such five miles | 0 | 8 | Sections 47 and 48. |
| (i.e. fourpence each way but subject to the proviso in section 48.) | | | |
| 2. Jurors attending under a common jury precept—the same rates as above. | | | |
| 3. Jurors attending under a special jury precept whether of four or of twelve jurors— | | | |
| If within three miles of the court per diem | 5 | 0 | |
| If above three but not exceeding five miles per diem | 7 | 6 | |
| If above five miles per diem | 10 | 0 | |
| And for every mile of distance beyond such five miles | 1 | 0 | |
| (i.e. sixpence each way but subject to the proviso in the aforesaid forty-eighth section.) | | | |
| 4. Jurors attending more than three days on the same panel— | | | |
| If under a general jury precept or common jury precept an additional sum (for the fourth and every subsequent day) of | 2 | 6 | |
| If under a special jury precept an additional sum (for the fourth and every subsequent day) of | 5 | 0 | |
| If continuously on the same trial in any civil case such further sum (if any) as the presiding judge shall direct under this Act section fifty. | | | |
| 5. Bystanders sworn on any trial according to the class of jurors to which they belong—either four shillings or seven shillings and sixpence. | | | |

31 VICTORIÆ No. 12. An Act to Consolidate and Amend the Laws relating to Oaths. [28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to oaths Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Oaths of Office and Allegiance.

Oath substituted for the oaths and declaration now prescribed by law.
20 Vic. No. 9 s. 1.
2 Pring 1035.

1. In every case where but for the passing of this Act it would be necessary for any person to take the oaths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath prescribed by the Act of Parliament commonly called the *Roman Catholic Relief Act* or to make the declaration prescribed by the Act of Parliament passed in the ninth year of the reign of King George the Fourth chapter seventeen and whensoever it shall be necessary for any person to take the oath of allegiance it shall be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—

"I A. B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland and of this Colony of Queensland belonging to and dependent on the said United Kingdom So help me God"—

anything in the said Acts of Parliament or in any other statute Act or law notwithstanding.

Before whom the oath may be taken.
20 Vic. No. 9 s. 2.
2 Pring 1036.

2. Where by any law now in force in this colony the said several oaths or any of them may be taken before the Supreme Court or before a judge or are required to be taken in open court the oath prescribed by this Act may be taken and subscribed at any hour before the said court or any judge thereof or before any circuit court or district court or court of quarter sessions or before any justice of the peace authorised by writ of *dedimus potestatem* for that purpose.

Judges' and justices' oaths of office.
20 Vic. No. 9 s. 3.
2 Pring 1036.

3. The oath of office to be hereafter taken by judges and justices of the peace respectively shall (in lieu of the oath in that behalf heretofore taken by them respectively) be the oath following—

"I A. B. do sincerely promise and swear that as a judge of the Supreme Court of Queensland [or as the case may be or as a justice of the peace for the Colony of Queensland or the city or district of in the Colony of Queensland] I will at all times and in all things do equal justice to the poor and the rich and discharge the duties of my office according to the laws and statutes of the realm and of this colony to the best of my knowledge and ability without fear favour or affection."

Name of the Sovereign.
20 Vic. No. 9 s. 4.
2 Pring 1036.

4. In case of the demise of Her Majesty (whom may God long preserve) the name of Her Majesty's successor for the time being shall be substituted in the form of oath instead of the name of Her Majesty.

Affirmation in lieu of oath.

5. Every person who now is or shall hereafter be by law entitled to make affirmation in lieu of an oath may make affirmation in

in the form hereinbefore prescribed with the words "solemnly and sincerely promise and affirm" substituted for the words "sincerely promise and swear."

31 VICTORIA No. 12.
20 Vic. No. 9 s. 5.
2 Pring 1036.

Declarations substituted for certain Official Oaths.

6. In any case where by any statute law or ordinance made or to be made relating to any of the public revenue of the colony or any of the public offices or public departments or by any official regulation in any department any oath solemn affirmation or affidavit might but for the passing of this Act be required to be taken or made by any person on the doing of any act matter or thing or for the purpose of verifying any book entry or return or for any other purpose whatsoever it shall be lawful for the Governor in Council of the said colony if he shall so think fit to substitute a declaration to the same effect as the oath solemn affirmation or affidavit which might but for the passing of this Act be required to be taken or made and the person who might under the Act or Acts imposing the same be required to take or make such oath solemn affirmation or affidavit shall in the presence of the officer or person empowered by such Act or Acts to administer such oath solemn affirmation or affidavit make and subscribe such declaration and every such officer or person is hereby empowered and required to administer the same accordingly.

Declarations substituted for oaths and affirmations.
9 Vic. No. 9 s. 1.
2 Pring 1033.

7. Provided always that nothing in the section last preceding contained shall extend or apply to the oath of allegiance in any case in which the same now is or may be required to be taken by any person who may be appointed to any office but such oath of allegiance shall continue to be required and shall be administered and taken as well and in the same manner as if this Act had not been passed.

Act not to extend to oath of allegiance.
See 20 Vic. No. 9.
9 Vic. No. 9 s. 5.
2 Pring 1034.

8. Provided also that nothing in the said last-mentioned section contained shall extend or apply to any oath solemn affirmation or affidavit which now is or hereafter may be made or taken or be required to be made or taken in any judicial proceeding in any court of justice or in any proceeding for or by way of summary conviction before any justice or justices of the peace but all such oaths affirmations and affidavits shall continue to be required and to be administered taken and made as well and in the same manner as if this Act had not been passed.

Nor to oaths in judicial proceeding.
9 Vic. No. 9 s. 6. 2
Pring 1031.

9. When the Governor in Council shall in any such case as aforesaid have substituted a declaration in lieu of an oath solemn affirmation or affidavit the same shall be notified in the *Gazette* and from and after the expiration of twenty-one days next following the day of the date of the *Gazette* wherein such notification shall have been first published the provisions of this Act shall extend and apply to each and every case office or department specified in such notification.

Such substitution to be notified in *Gazette*.
9 Vic. No. 9 s. 2.
2 Pring 1033.

10. After the expiration of the said twenty-one days it shall not be lawful for any officer or other person to administer or cause to be administered or receive or cause to be received any oath solemn affirmation or affidavit in lieu of which such declaration as aforesaid shall have been directed by the said Governor in Council to be substituted:

Oaths or affirmations not to be made or taken thereafter.
9 Vic. No. 9 s. 7.
2 Pring 1034.

31 VICTORIA No. 12.

Persons making false
declaration guilty of
misdemeanor.
9 Vic. No. 9 s. 4.
2 Pring 1034.

11. If any person shall make and subscribe any such declaration as hereinbefore mentioned in lieu of any oath solemn affirmation or affidavit by any Act or Acts relating to the public revenue as aforesaid required to be made on the doing of any act matter or thing or for verifying any book account entry or return or for any purpose whatsoever and shall wilfully make therein any false statement as to any material particular the person making the same shall be deemed guilty of a misdemeanor.

Abolition of Extra-judicial Oaths.

Abolition of extra-
judicial oaths.
See 20 Vic. No. 9.
9 Vic. No. 9 s. 7.
2 Pring 1034.

12. Whereas a practice has prevailed of administering and receiving oaths and affidavits voluntarily taken and made in matters not the subject of any judicial inquiry nor in anywise pending or at issue before the justice of the peace or other person by whom such oaths or affidavits have been administered or received and whereas doubts have arisen whether or not such proceeding is illegal for the more effectual suppression of such practice and removing such doubts be it enacted That it shall not be lawful for any justice of the peace or other person to administer or cause or allow to be received any oath solemn affirmation or affidavit touching any matter or thing whereof such justice or other person hath not jurisdiction or cognizance by some statute Act or ordinance in force at the time being Provided always that nothing herein contained shall be construed to extend to any oath solemn affirmation or affidavit before any justice in any matter or thing touching the preservation of the peace or the prosecution trial or punishment of offences or touching any inquiry held before any justice of the peace in the nature of coroners' inquests respecting sudden death or touching any proceedings before the Legislative Council or any committee thereof nor to any oath solemn affirmation or affidavit which may be required by the laws of any foreign or other country out of Queensland or its dependencies to give validity to instruments in writing designed to be used in foreign or other countries respectively.

Proviso.

Statutable Declaration.

Declaration in cases
not specially provided
for.
9 Vic. No. 9 s. 9.
2 Pring 1035.

13. And whereas it may be necessary and proper in many cases not herein specified to require confirmation of written instruments or allegations or proof of debts or of the execution of deeds or other matters be it therefore enacted That it shall and may be lawful for any justice of the peace notary public or other officer now by law authorised to administer an oath to take and receive the declaration of any person voluntarily making the same before him and if any declaration so made shall be false or untrue in any material particular the person wilfully making such false declaration shall be deemed guilty of a misdemeanor.

Form of Declarations.

Form of declaration.
9 Vic. No. 9 s. 11.
2 Pring 1035.

14. In all cases where a declaration in lieu of an oath shall have been substituted by this Act or by virtue of any power or authority hereby given or where a declaration is directed or authorised to be made and subscribed under the authority of this Act or of any power hereby given although the same be not substituted in lieu of an oath heretofore legally taken such declaration unless otherwise

otherwise directed by the powers hereby given shall be in the 31 VICTORIA No. 12. following form—

“ I A. B. do solemnly and sincerely declare that [*let him declare the facts*] and I 9 Vic. No. 9 schedule.
 “ make this solemn declaration conscientiously believing the same to be true 2 Pring 1035.
 “ and by virtue of the provisions of the ‘ *Oaths Act of 1867.*’ ”

Fees payable thereon.

15. Whenever any declaration shall be made and subscribed by any person or persons under or in pursuance of the provisions of this Act or any of them all and every such fees or fee as would have been due and payable on the taking or making any legal oath solemn affirmation or affidavit shall be in like manner due and payable upon making and subscribing such declaration.

Fees payable.
 9 Vic. No. 9 s. 10.
 2 Pring 1035.

False Declaration.

16. In any case where a declaration is substituted for an oath under the authority of this Act or by virtue of any power or authority hereby given or is directed and authorised to be made and subscribed under the authority of this Act or by virtue of any power hereby given any person who shall wilfully and corruptly make and subscribe any such declaration knowing the same to be untrue in any material particular shall be deemed guilty of a misdemeanor.

False declaration.
 9 Vic. No. 9 s. 12.
 2 Pring 1035.

Solemn Affirmation.

17. If any person called as a witness or required or desired to make an oath affidavit or deposition shall refuse or be unwilling from alleged conscientious motives to be sworn it shall be lawful for the court or judge or other presiding officer or person qualified to administer oaths or to take affidavits or depositions upon being satisfied of the sincerity of such objection to permit such person instead of being sworn to make his or her solemn affirmation in the words following *videlicet*—

Affirmation instead of oath in certain cases.
 17 & 18 Vic. c. 125 s. 20.
 20 Vic. No. 31 s. 10.
 2 Pring 1649.

“ I A. B. do solemnly sincerely and truly affirm and declare that the taking of
 “ any oath is according to my religious belief unlawful, and I do also solemnly
 “ sincerely and truly affirm and declare &c.”—

which solemn affirmation shall be of the same force and effect as if such person had taken an oath in the usual form and the like provisions shall apply also to every person required to be sworn as a juror.

Quakers and Moravians.

18. Every person being or having been of the persuasion of the people called Quakers and every person being or having been a Moravian shall be permitted to make his or her solemn affirmation or declaration instead of taking an oath in all places and for all purposes whatsoever where an oath is or shall be required either by the common law or by an Act of Parliament already made or hereafter to be made which said affirmation or declaration shall be of the same force and effect as if he or she had taken an oath in the usual form and if any such person making such solemn affirmation or declaration shall be lawfully convicted wilfully falsely and corruptly to have affirmed or declared any matter or thing which if the same had been in the usual form would have amounted to wilful and corrupt perjury he or she shall incur the same penalties and forfeitures as by the laws and statutes

Quakers and Moravians permitted to make a solemn affirmation or declaration instead of oath.
 3 & 4 Wm. IV. c. 49 s. 1. 2 Pring 1030.

Penalty on affirming or declaring falsely.
 1 & 2 Vic. c. 77.

31 VICTORIA No. 12. statutes of this colony are enacted against persons convicted of wilful and corrupt perjury any law statute or custom to the contrary notwithstanding Provided always that every such affirmation or declaration shall be in the words following that is to say—

Form of declaration.

“ I A. B. being [*or having been as the case may be*] one of the people called Quakers [*or one of the persuasion of the people called Quakers or of the united brethren called Moravians as the case may be*] do solemnly sincerely and truly affirm and declare.”

Separatists.

Separatists instead of an oath may make the following affirmation.

3 & 4 Wm. IV. c. 82.

19. Every person for the time being belonging to the sect called Separatists who shall be required upon any lawful occasion to take an oath in any case where by law an oath is or may be required shall instead of the usual form be permitted to make his or her solemn affirmation or declaration in these words following *videlicet*—

“ I A. B. do in the presence of Almighty God solemnly sincerely and truly affirm and declare that I am a member of the religious sect called Separatists and that the taking of any oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect and I do also in the same solemn manner affirm and declare”—

Such affirmation shall have the effect of an oath.

which said solemn affirmation or declaration shall be adjudged and taken and is hereby enacted and declared to be of the same force and effect to all intents and purposes in all courts of justice and other places whatsoever where by law an oath is or may be required as if such Separatists had taken an oath in the usual form.

Persons making a false affirmation to be subject to the same punishment as for perjury.

3 & 4 Wm. IV. c. 82.

20. If any person making such solemn affirmation or declaration shall in fact not be one of the people commonly called Separatists or shall wilfully falsely and corruptly affirm or declare any other matter or thing which if the same had been sworn in the usual form would have amounted to wilful and corrupt perjury every such person so offending shall incur the same penalties and forfeitures as by the laws and statutes of this colony are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

Oaths of Jurors.

Swearing of jurors in civil causes.

21. Jurors may be sworn in civil causes in open court in the following form or to the like effect—

“ You shall well and truly try the issues joined between the parties [*or assess the damages herein*] and a true verdict give according to the evidence So help you God.”

Swearing of jurors in criminal trials.

22. Jurors may be sworn in criminal trials in open court in the following form or to the like effect—

In felony or misdemeanor.

“ You shall well and truly try and true deliverance make between our Sovereign Lady the Queen and the prisoner [*or prisoners or defendant*] at the bar [*or the defendant*] whom you shall have in charge and a true verdict give according to the evidence So help you God ”

or in misdemeanor the jurors may be sworn as follows or to the like effect—

In misdemeanor.

“ You shall well and truly by the issue [*or issues*] joined between Our Sovereign Lady the Queen and the defendant and a true verdict give according to the evidence So help you God.”;

Oaths

Oaths of Witnesses.

31 VICTORIA No. 12.

23. Witnesses may be sworn in civil causes in open court in the following form or to the like effect—

Witnesses' oath in civil causes.

"The evidence which you shall give to the court and jury sworn touching the matters in question between the parties shall be the truth the whole truth and nothing but the truth So help you God."

Oath to make True Answer.

24. Any person may be sworn on the *voire dire* in the following form or to the like effect—

Voire dire.

"You shall true answer make to all such questions as the court shall demand of you So help you God."

25. Witnesses may be sworn on criminal trials in open court in the following form or to the like effect—

Witnesses' oath on criminal trials.

"The evidence which you shall give to the court and jury sworn between our Sovereign Lady the Queen and the prisoner [*or* prisoners *or* defendant] at the bar [*or* the defendant] shall be the truth the whole truth and nothing but the truth So help you God."

Oaths of Interpreters in Civil Causes.

26. Interpreters may be sworn in civil causes in open court in the following form or to the like effect—

Interpreters' oath in civil causes.

"You swear that you understand the language of the witness [*or* plaintiff *or* defendant] and are able to interpret between him and the court and jury and all persons conversant with the English language So help you God"
 "You shall well and truly interpret and true explanation make between the witness [*or* plaintiff *or* defendant] and the court and jury and all persons conversant with the English language to the best of your knowledge skill and ability and the evidence you shall give to the court and jury sworn touching the matters in question shall be truth the whole truth and nothing but the truth So help you God."

27. Interpreters may be sworn in civil causes in open court to interpret on the *voire dire* in the following form or to the like effect—

Interpreters' oath in civil causes on the *voire dire*.

"You swear that you understand the language of the witness [*or* plaintiff *or* defendant] and are able to interpret between him and the court and all persons conversant with the English language So help you God"
 "You shall well and truly interpret and true explanation make between the witness [*or* plaintiff *or* defendant] and the court and all persons conversant with the English language to the best of your knowledge skill and ability and you shall true answer make to all such questions as the court shall demand of you So help you God."

Interpreters' Oaths for the Purpose of Arraignment.

28. Interpreters may be sworn in open court for the purpose of conducting the arraignment of any person accused in the following form or to the like effect—

Interpreters' oath for the arraignment.

"You swear that you understand the language of the prisoner at the bar and are able to interpret between him and the court So help you God"
 "You shall well and truly interpret and true explanation make between the prisoner at the bar and the court to the best of your knowledge skill and ability and you shall true answer make to all such questions as the court shall demand of you So help you God"

To interpret between prisoner and others.

and whenever on the trial of such person it may be necessary to examine a witness who does not speak the English language on the *voire dire* the interpreter's oath may be in the form given in the section

next

31 VICTORIA No. 12. next preceding the present section or to the like effect retaining the word "witness" throughout.

Oaths of Interpreters in Criminal Cases.

29. Interpreters may be sworn for the purposes of a criminal trial in open court in the following form or to the like effect—

FOREIGN PRISONER.

" You swear that you understand the language of the prisoner [*or prisoners or*
 " defendant] at the bar [*or the defendant*] and are able to interpret between
 " him [*or them*] and the court and jury and between him [*or them*] and all
 " persons conversant with the English language So help you God "
 " You shall well and truly interpret and true explanation make between
 " the prisoner [*or prisoners or defendant*] at the bar [*or the defendant*]
 " and the court and jury and between him [*or them*] and all persons
 " conversant with the English language to the best of your knowledge
 " skill and ability and the evidence which you shall give to the court
 " and jury sworn between our Sovereign Lady the Queen and the prisoner
 " [*or prisoners*] at the bar shall be the truth the whole truth and nothing
 " but the truth So help you God "

FOREIGN WITNESS.

To interpret between
 a witness and others.

" You swear that you understand the language of the witness and are able
 " to interpret between him and the court and jury and the prisoner and all
 " persons conversant with the English language "
 " You shall well and truly interpret and true explanation make between
 " the witness the court and jury and the prisoner and all persons
 " conversant with the English language and the evidence which you
 " shall give to the court and jury sworn between our Sovereign Lady
 " the Queen and the prisoner at the bar shall be the truth the whole truth
 " and nothing but the truth So help you God "

Provided that when the witness and the prisoner are foreigners of different languages and the interpreter is unable to interpret to the prisoner the reference to the prisoner shall be omitted and an additional interpreter sworn to interpret the English interpretation of the first interpreter to the prisoner.

Where witness and
 prisoner are of dif-
 ferent languages.

30. When on any criminal trial a witness and the prisoner are foreigners of different languages and a foreign interpreter can be found conversant with the languages of the prisoner and the witness and able to interpret between them and a second interpreter can be found conversant with the English and with any language with which the first interpreter is conversant and able to interpret from the last-named language into English the first interpreter may be sworn through the second interpreter in open court in the following form or to the like effect—

First interpreter's
 oaths.

" You swear that you understand the several languages of the witness and the
 " prisoner and are able to interpret between them So help you God "
 " You shall well and truly interpret and true explanation make between
 " the witness and the prisoner at the bar and the prisoner at the bar
 " and the witness and between them and each of them and the court and
 " jury and all interpreters witnesses and persons whatsoever to the best of
 " your knowledge skill and ability and the evidence you shall give to the
 " court and jury sworn between our Sovereign Lady the Queen and the
 " prisoner at the bar shall be the truth the whole truth and nothing but the
 " truth So help you God "

and whatever be the number of interpreters necessary before the statements of the prisoner and the witness can be interpreted into one and the same language and into English the same forms of oath shall
 be

be administered *mutatis mutandis* to each interpreter in the succession 31 VICTORIA No. 12. and the like provision shall apply in civil causes as far as may be.

Oath of Bailiff in charge of Jury.

31. Bailiffs may be sworn to take charge of juries in the following form or to the like effect—

Oath of bailiff in charge of jury.

“ You swear that you will keep this jury in some safe and convenient place
“ without meat drink or fire candle-light excepted You shall allow no
“ one to speak to them neither shall you speak to them yourself without
“ leave of the court except it be to ask if they have agreed upon their
“ verdict So help you God.”

General Provision.

32. Nothing herein contained shall invalidate any oath sworn or taken in a sufficient and lawful form and any oath of allegiance or office sworn before a judge of the Supreme Court may be certified or recorded by the associate or judge's clerk.

General provision.

What Oaths shall bind.

33. In all cases in which an oath may lawfully be and shall have been administered to any person either as a jurymen or a witness or a deponent in any proceeding civil or criminal in any court of law or equity in the colony or on appointment to any office or employment or on any occasion whatever such person is bound by the oath administered provided the same shall have been administered in such form and with such ceremonies as such person may declare to be binding and every such person in case of wilful false swearing may be convicted of the crime of perjury in the same manner as if the oath had been administered in the form and with the ceremonies most commonly adopted.

All persons bound by the oath administered in the form &c. in which such persons may declare binding. 1 & 2 Vic. c. 105.

Powers of the Court.

34. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and to prescribe forms for the doing of anything by this Act prescribed or authorised to be done Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges. 17 Vic. No. 21 s. 174. 2 Pring p. 1638. 15 & 16 Vic. c. 76 s. 223. 27 Vic. No. 14 s. 20. 3 Pring 316.

Commencement and Short Title.

35. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the “ *Oaths Act of 1867.*”

Commencement of Act. Short title.

31 VICTORIA No. 36. **An Act to Consolidate and Amend the Laws relating to Mercantile Matters.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to mercantile matters Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Assignment of Personality.

Assignment to self and others.
22 & 23 Vic. c. 35
s. 21.

1. Any person shall have power to assign personal property now by law assignable including chattels real directly to himself and another person or other persons or corporation by the like means he might assign the same to another.

Powers of Attorney.

Conveyances &c. under certain powers of attorney executed after death or revocation and before notice thereof to be valid.
17 Vic. No. 22.
2 Pring 1118.

2. Whenever the person who may have executed or shall hereafter execute any power of attorney (whether such person were or be at the time within the colony or not) shall have declared or shall declare therein that such power shall continue in force until notice of his death or of the revocation of such power shall have been received by the attorneys named therein then and in every such case such power shall operate accordingly and every act hereafter done performed or submitted to by the said attorneys within the scope of the powers and authority conferred upon them after such death or revocation as aforesaid and before notice thereof shall have been received shall be as effectual in all respects as if such death or revocation had not happened or been made and a solemn declaration made by any such attorney that he has not received any notice of the revocation of such power of attorney by death or otherwise shall if made immediately before or after executing any such conveyance or other instrument as aforesaid or doing or performing or submitting to any such act as aforesaid be taken to be conclusive proof of such non-revocation at the time of such execution in favor of any person who shall *bonâ fide* and for valuable consideration and without notice to himself of any such revocation have accepted any such conveyance or other instrument from or dealt with such attorney in the name of his principal.

Fieri Facias.

Persons acquiring title to goods before they have been seized or attached under a writ against the seller protected.
28 Vic. No. 6 s. 1.
3 Pring 226.

3. No writ of *fieri facias* or other writ of execution and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for a valuable consideration before the actual seizure or attachment thereof by virtue of such writ provided such person had not at the time when he acquired such title notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff or under sheriff or of any other officer.

4. Every

Satisfied Securities.

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4. Every person who being surety for the debt or duty of another or being liable with another for any debt or duty shall pay such debt or perform such duty shall be entitled to have assigned to him or to a trustee for him every judgment specialty or other security which shall be held by the creditor in respect of such debt or duty whether such judgment specialty or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty and such person shall be entitled to stand in the place of the creditor and to use all the remedies and if need be and upon a proper indemnity to use the name of the creditor in any action or other proceeding at law or in equity in order to obtain from the principal debtor or any co-surety co-contractor or co-debtor as the case may be indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him. Provided always that no co-surety co-contractor or co-debtor shall be entitled to recover from any other co-surety co-contractor or co-debtor by the means aforesaid more than the just proportion to which as between those parties themselves such last-mentioned person shall be justly liable.

A surety who discharges the liability to be entitled to assignment of all securities held by the creditor.

28 Vic. No. 6 s. 5.
3 Pring 227.

Bills of Lading.

5. Whereas by the custom of merchants a bill of lading of goods being transferable by indorsement the property in the goods may thereby pass to the indorsee but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner and it is expedient that such rights should pass with the property. And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid. Now therefore be it enacted that every consignee of goods named in a bill of lading and every indorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement shall have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Preamble.
20 Vic. No. 13.
1 Pring 111.
18 & 19 Vic. c. 111.

Rights under bills of lading to vest in consignee or indorsee.
20 Vic. No. 13 s. 1.
1 Pring 112.
18 & 19 Vic. c. 111 s. 1.

6. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu* or any right to claim freight against the original shipper or owner or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee or of his receipt of the goods by reason or in consequence of such consignment or indorsement.

Not to affect right of stoppage *in transitu* or claims for freight.
20 Vic. No. 13 s. 2.
1 Pring 112.
18 & 19 Vic. c. 111 s. 2.

7. Every bill of lading in the hands of a consignee or indorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same notwithstanding that

Bill of lading in hands of consignee &c. conclusive evidence of the shipment as against master &c.

31 VICTORIA No. 36. that such goods or some part thereof may not have been so shipped
 20 Vic. No. 13 s. 3. unless such holder of the bill of lading shall have had actual notice
 1 Pring 112. at the time of receiving the same that the goods had not been in fact
 18 & 19 Vic. c. 112 laden on board.
 s. 3.

Interpretation.

Meaning of the term
 "document of title."
 5 & 6 Vic. c. 39 s. 4.

And when agent en-
 trusted.

And when in posses-
 sion.

What to be deemed
 a "contract or agree-
 ment" and advance.

Possession *prima*
facie evidence of en-
 trusting.

Factors or agents
 having goods &c. in
 possession deemed
 owners so as to give

8. Any bill of lading India warrant dock warrant warehouse keeper's certificate warrant or order for the delivery of goods or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise either by indorsement or delivery the possessor of such document to transfer or receive goods thereby represented shall be deemed and taken to be a document of title within the meaning of the eleven sections next succeeding and any agent entrusted as hereinafter mentioned and possessed of any such document of title whether derived immediately from the owner of such goods or obtained by reason of such agents having been entrusted with the possession of the goods or of any other document of title thereto shall be deemed and taken to have been entrusted with the possession of the goods represented by such document of title as aforesaid and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates and such agent shall be deemed to be possessed of such goods or documents whether the same shall be in his actual custody or shall be held by any other person subject to his control or for him or on his behalf and where any loan or advance shall be *bond fide* made to any agent entrusted with and in possession of any such goods or documents of title as aforesaid on the faith of any contract or agreement in writing to consign deposit transfer or deliver such goods or documents of title as aforesaid and such goods or documents of title shall actually be received by the person making such loan or advance without notice that such agent was not authorised to make such pledge or security every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto and any contract or agreement whether made directly with such agent as aforesaid or with any clerk or other person on his behalf shall be deemed a contract or agreement with such agent and any payment made whether by money or bill of exchange or other negotiable security shall be deemed and taken to be an advance within the meaning of this Act and an agent in possession as aforesaid of such goods or documents shall be taken for the purposes of this Act to have been entrusted therewith by the owner thereof unless the contrary can be shown in evidence.

Persons Entrusted with Goods.

9. Any person or persons entrusted for the purpose of consign-
 ment or of sale with any goods wares or merchandise and who shall
 have shipped such goods wares or merchandise in his her or their own
 name

name or names and any person or persons in whose name or names any goods wares or merchandise shall be shipped by any other person or persons shall be deemed and taken to be the true owner or owners thereof so far as to entitle the consignee or consignees of such goods wares and merchandise to a lien thereon in respect of any money or negotiable security or securities advanced or given by such consignee or consignees to or for the use of the person or persons in whose name or names such goods wares or merchandise shall be shipped or in respect of any money or negotiable security or securities received by him her or them to the use of such consignee or consignees in the like manner to all intents and purposes as if such person or persons was or were the true owner or owners of such goods wares and merchandise. Provided such consignee or consignees shall not have notice by the bill of lading for the delivery of such goods wares or merchandise or otherwise at or before the time of any advance of such money or negotiable security or of such receipt of money or negotiable security in respect of which such lien is claimed that such person or persons so shipping in his her or their own name or names or in whose name or names any goods wares or merchandise shall be shipped by any person or persons is or are not the actual and *bonâ fide* owner or owners proprietor or proprietors of such goods wares and merchandise so shipped as aforesaid any law usage or custom to the contrary thereof in any wise notwithstanding. Provided also that the person or persons in whose name or names any such goods wares or merchandise are so shipped as aforesaid shall be taken for the purposes of this Act to have been entrusted therewith for the purpose of consignment or of sale unless the contrary thereof shall be made to appear by bill of discovery or otherwise or be made to appear or be shown in evidence by any person disputing such fact.

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validity to contracts
with persons dealing
bonâ fide upon the
faith of such pro-
perty.
6 Geo. IV. c. 94 s. 1.

Proviso as to notice.

As to bills of disco-
very.

Persons entrusted with Bill of Lading.

10. Any person or persons entrusted with and in possession of any bill of lading India warrant dock warrant warehouse-keeper's certificate wharfinger's certificate warrant or order for delivery of goods shall be deemed and taken to be the true owner or owners of the goods wares and merchandise described and mentioned in the said several documents hereinbefore stated respectively or either of them so far as to give validity to any contract or agreement hereafter to be made or entered into by such person or persons so entrusted and in possession as aforesaid with any person or persons body or bodies politic or corporate for the sale or disposition of the said goods wares and merchandise or any part thereof or for the deposit or pledge thereof or any part thereof as a security for any money or negotiable instrument or instruments advanced or given by such person or persons body or bodies politic or corporate upon the faith of such several documents or either of them. Provided such person or persons body or bodies politic or corporate shall not have notice of such documents or either of them or otherwise that such person or persons so entrusted as aforesaid is or are not the actual and *bonâ fide* owner or owners proprietor or proprietors of such goods wares or merchandise so sold or deposited or pledged as aforesaid any law usage or custom to the contrary thereof in anywise notwithstanding.

Person in possession
of bills of lading &c.
deemed owner so far
as to make valid con-
tracts.
6 Geo. IV. c. 94 s. 2.

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Boná Fide Advances.

Boná fide advance to persons entrusted with the possession of goods or documents of title though known to be agents protected.

5 & 6 Vic. c. 39 s. 1.

11. From and after the commencement of this Act any agent who shall thereafter be entrusted with the possession of goods or of the documents of title to goods shall be deemed and taken to be owner of such goods and documents so far as to give validity to any contract or agreement by way of pledge lien or security *boná fide* made by any person with such agent so entrusted as aforesaid as well for any original loan advance or payment made upon the security of such goods or documents as also for any further or continuing advance in respect thereof and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

Boná Fide Deposits and Exchanges.

Boná fide deposits in exchange protected.

5 & 6 Vic. c. 39 s. 2.

12. When any such contract or agreement for pledge lien or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandise or document of title or negotiable security upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent such contract and agreement if *boná fide* on the part of the person with whom the same may be made shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this Act and shall be as valid and effectual to all intents and purposes and to the same extent as if the consideration for the same had been a *boná fide* present advance of money. Provided always that the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which or the documents of title to which or the negotiable security which shall be delivered up and exchanged.

But no lien beyond the value of the goods given up.

Boná Fides Essential.

But the statute to be construed to protect only transactions *boná fide* without notice that the agent pledging is acting without authority or *malá fide* against the owner.

5 & 6 Vic. c. 39 s. 3.

13. The last two preceding sections and every matter and thing therein contained shall be deemed and construed to give validity to such contracts and agreements only and to protect only such loans advances and exchanges as shall be made *boná fide* and without notice that the agent making such contracts or agreements as aforesaid has not authority to make the same or is acting *malá fide* in respect thereof against the owner of such goods and merchandise and nothing therein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given nor to authorise any agent entrusted as aforesaid in deviating from any express orders or authority received from the owner but for the purpose and to the intent of protecting all such *boná fide* loans advances and exchanges as aforesaid (though made with notice of such agent not being the owner but without any notice of the agent's acting without authority) and to no further or other intent or purpose such

such contract or agreement as aforesaid shall be binding on the owner and all other persons interested in such goods. 31 VICTORIA No. 36.

Antecedent Debt of Agent.

14. In case any person or persons body or bodies politic or corporate shall accept and take any such goods wares or merchandise in deposit or pledge from any such person or persons so in possession and entrusted as aforesaid without notice as aforesaid as security for any debt or demand due and owing from such person or persons so entrusted and in possession as aforesaid to such person or persons body or bodies politic or corporate before the time of such deposit or pledge then and in that case such person or persons body or bodies politic or corporate so accepting or taking such goods wares or merchandise in deposit or pledge shall acquire no further or other right title or interest in or upon or to the said goods wares or merchandise or any such document as aforesaid than was possessed or could or might have been enforced by the said person or persons so possessed and entrusted as aforesaid at the time of such deposit or pledge as a security as last aforesaid but such person or persons body or bodies politic or corporate so accepting or taking such goods wares or merchandise in deposit or pledge shall and may acquire possess and enforce such right title or interest as was possessed and might have been enforced by such person or persons so possessed and entrusted as aforesaid any rule or law usage or custom to the contrary notwithstanding.

No person to acquire a security upon goods in the hands of an agent for an antecedent debt beyond amount of agent's interest in the goods.
6 Geo. IV. c. 94 s. 3.

Agent's Authority.

15. Any person or persons body or bodies politic or corporate may contract with any agent or agents entrusted with any goods wares or merchandise or to whom the same may be consigned for the purchase of any such goods wares or merchandise and receive the same of and pay for the same to such agent or agents and such contract and payment shall be binding upon and good against the owner of such goods wares and merchandise notwithstanding such person or persons bodies politic or corporate shall have notice that the person or persons making and entering into such contract or in whose behalf such contract is made and entered into as an agent or agents Provided such contract and payment be made in the usual and ordinary course of business and that such person or persons body or bodies politic or corporate shall not when such contract is entered into or payment made have notice that such agent or agents is or are not authorised to sell the said goods wares and merchandise or to receive the said purchase money.

Persons may contract with known agents in the ordinary course of business or out of that course if within agent's authority notwithstanding notice.
6 Geo. IV. c. 94 s. 4.

Pledge by Agent.

16. Any person or persons body or bodies politic or corporate may accept and take any such goods wares or merchandise or any such document as aforesaid in deposit or pledge from any such factor or factors agent or agents notwithstanding such person or persons body or bodies politic or corporate shall have such notice as aforesaid that the person or persons making such deposit or pledge is or are a factor or factors agent or agents but then and in that case such person or persons body or bodies politic or corporate shall acquire no further or other right title or interest in or upon or to the said goods wares or merchandise

What interest persons accepting and taking goods &c. in pledge from known agents may acquire.
6 Geo. IV. c. 94 s. 5.

31 VICTORIA No. 36. merchandise or any such document as aforesaid for the delivery thereof than was possessed or could or might have been enforced by the said factor or factors agent or agents at the time of such deposit or pledge as a security as last aforesaid but such person or persons body or bodies politic or corporate shall and may acquire possess and enforce such right title or interest as was possessed and might have been enforced by such factor or factors agent or agents at the time of such deposit or pledge as aforesaid any rule or law usage or custom to the contrary notwithstanding.

Civil Responsibility of Agent.

Agent's civil responsibility not to be diminished.
5 & 6 Vic. c. 39 s. 5.

17. Nothing herein contained shall lessen vary alter or affect the civil responsibility of an agent for any breach of duty or contract or non-fulfilment of his orders or authority in respect of any such contract agreement lien or pledge as aforesaid.

Rights of Owner.

Proviso for right of true owner to follow his goods while in the hands of agents or his assignee in case of bankruptcy or insolvency or to recover them from a third person upon paying his advances secured upon them.
6 Geo. IV. c. 94 s. 6.

18. Nothing herein contained shall be construed or taken to deprive or prevent the true owner or owners or proprietor or proprietors of such goods wares or merchandise from demanding and recovering the same from his her or their factor or factors agent or agents before the same shall have been so sold deposited or pledged or from the assignee or assignees of such factor or factors agent or agents in the event of his her or their bankruptcy or insolvency nor to prevent such owner or owners proprietor or proprietors from demanding or recovering of and from any person or persons body or bodies politic or corporate the price or sum agreed to be paid for the purchase of such goods wares or merchandise subject to any right of set-off on the part of such person or persons body or bodies politic or corporate against such factor or factors agent or agents nor to prevent such owner or owners proprietor or proprietors from demanding or recovering of and from such person or persons body or bodies politic or corporate such goods wares or merchandise so deposited or pledged upon repayment of the money on or restoration of the negotiable instrument or instruments so advanced or given on the security of such goods wares or merchandise as aforesaid by such person or persons body or bodies politic or corporate to such factor or factors agent or agents and upon payment of such further sum of money or for restoration of such the negotiable instrument or instruments (if any) as may have been advanced or given by such factor or factors agent or agents to such owner or owners proprietor or proprietors or on payment of a sum of money equal to the amount of such instrument or instruments nor to prevent the said owner or owners proprietor or proprietors from recovering of and from such person or persons body or bodies politic or corporate any balance or sum of money remaining in his her or their hands as the produce of the sale of such goods wares or merchandise after deducting thereout the amount of the money or negotiable instrument or instruments so advanced or given upon the security thereof as aforesaid Provided always that in case of the bankruptcy or insolvency of any such factor or agent the owner or owners proprietor or proprietors of the goods wares and merchandise so pledged and redeemed as aforesaid shall be held to have discharged *pro tanto* the debt due by him her or them to the estate of such bankrupt or insolvent.

Proviso in case of bankruptcy or insolvency of factor for owner of goods so pledged and redeemed.

19. Nothing

19. Nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title as aforesaid at any time before such goods shall have been sold upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien may exist and upon payment or satisfaction to such agent if by him required of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents or any of them by way of lien as against such owner or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged or who shall have any such lien thereon as aforesaid any balance or sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of the lien of such persons under such contract or agreement as aforesaid. Provided always that in case of the bankruptcy or insolvency of any such agent the owner of the goods which shall have been so redeemed by such owner as aforesaid shall in respect of the sum paid by him on account of such agent for such redemption be held to have paid such sum for the use of such agent before his bankruptcy or insolvency or in case the goods shall not be so redeemed the owner shall be deemed a creditor of such agent for the value of the goods so pledged at the time of the pledge and shall if he shall think fit be entitled in either of such cases to prove for or set off the sum so paid or the value of such goods as the case may be. Nothing in this Act hereinbefore contained shall be construed in anywise to affect any contract agreement lien pledge or other act matter or thing made or done before the coming into operation of this Act.

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Right of owner to redeem.

5 & 6 Vic. c. 39 s. 7.

Or recover balance of proceeds.

In case of insolvency owner to prove for amount paid to redeem or for value of goods if unredeemed.

Not to affect any contract made before the passing of this Act.

Interpretation.

20. In construing the six sections next succeeding of this Act the following words and expressions shall have the meanings hereby assigned them unless there be something in the subject or context repugnant to such constructions (that is to say)—

Interpretation of terms.

19 Vic. No. 2 s. 7.

1 Pring 114.

17 & 18 Vic. c. 36 s. 7.

The expression "bill of sale" shall include bills of sale assignments transfers declarations of trust without transfer and other assurances of personal chattels and also powers of attorney authorities or licenses to take possession of personal chattels as security for any debt but shall not include the following documents (that is to say) assignments for the benefit of the creditors of the person making or giving the same marriage settlements transfers or assignments of any ship or vessel or any share thereof transfers of goods in the ordinary course of business of any trade or calling bills of sale of goods in foreign parts or at sea bills of lading India warrants warehouse keepers' certificates warrants or orders for the delivery of goods or any other documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise either by indorsement or by delivery the possessor of such document to transfer or receive goods thereby represented.

The

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The expression "personal chattels" shall mean goods furniture fixtures and other articles capable of complete transfer by delivery and shall not include chattel interests in real estate nor shares or interests in the stock funds or securities of any government or in the capital or property of any incorporated or joint stock company nor choses in action nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same shall be at the time of the making or giving of such bill of sale.

Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving the bill of sale so long as they shall remain or be in or upon any house mill warehouse building works yard land or other premises occupied by him or as they shall be used and enjoyed by him in any place whatsoever notwithstanding that formal possession thereof may have been taken by or given to any other person. But nothing in those six sections contained shall be deemed to affect the provisions of this Act for giving effect to liens on wool and mortgages on sheep cattle horses or crops.

Proviso 19 Vic. No. 2
s. 8.
1 Pring 114.

Bills of Sale.

Bills of sale to be void unless the same or a copy thereof be filed within thirty days in like manner as warrants of attorney.
19 Vic. No. 2 s. 1.
1 Pring 112.
17 & 18 Vic. c. 36 s. 1.

21. Every bill of sale of personal chattels made after the passing of this Act either absolutely or conditionally or subject or not subject to any trusts and whereby the grantee or holder shall have power either with or without notice and either immediately after the making of such bill of sale or at any future time to seize and to take possession of any property and effects comprised in or made subject to such bill of sale and every schedule or inventory which shall be thereto annexed or therein referred to or a true copy thereof and of every attestation of the execution thereof shall together with an affidavit of the time of such bill of sale being made or given and a description of the residence and occupation of the person making or giving the same or in case the same shall be made or given by any person under or in the execution of any process then a description of the residence and occupation of the person against whom such process shall have issued and of every attesting witness to such bill of sale be filed or recorded in the office of the Supreme Court within thirty days after the making or giving of such bill of sale or within sixty days where a person giving the same shall reside at a greater distance than four hundred miles from Brisbane or within ninety days if he shall reside more than six hundred miles therefrom (in like manner as a warrant of attorney to confess judgment in the Supreme Court is now by law required to be filed or recorded) otherwise such bill of sale shall as against all assignees of the estate and effects of the person whose goods or any of them are comprised in such bill of sale under the laws relating to insolvency or under any assignment for the benefit of the creditors of such person and as against all sheriffs officers and other persons seizing any property or effects comprised in such bill of sale in the execution of any process in any court of law or equity authorising
the

the seizure of the goods of the person by whom or of whose goods such bill of sale shall have been made and against every person on whose behalf such process shall have been issued be null and void to all intents and purposes whatsoever so far as regards the property in or right to the possession of any personal chattels comprised in such bill of sale which at or after the time of filing the insolvent's or a creditor's petition in such insolvency or of the execution by the debtor of such assignment for the benefit of his creditors or of executing such process (as the case may be) and after the expiration of the said period of thirty days shall be in the possession or apparent possession of the person making such bill of sale or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given as the case may be.

22. If such bill of sale shall be made or given subject to any defeasance or condition or declaration of trust not contained in the body thereof such defeasance or condition or declaration of trust shall for the purpose of this Act be taken as part of such bill of sale and shall be written on the same paper or parchment on which such bill of sale shall be written before the time when the same or a copy thereof respectively shall be filed otherwise such bill of sale shall be null and void to all intents and purposes as against the same persons and as regards the same property and effects as if such bill of sale or a copy thereof had not been filed according to the provisions of this Act.

23. The prothonotary of the said Supreme Court shall cause every bill of sale and every such schedule and inventory as aforesaid and every such copy filed in the said office under the provisions of this Act to be numbered and shall keep a book or books in his said office in which he shall cause to be fairly entered an alphabetical list of every such bill of sale containing therein the name addition and description of the person making or giving the same or in case the same shall be made or given by any person under or in the execution of process as aforesaid then the name addition and description of the person against whom such process shall have issued and also of the person to whom or in whose favor the same shall have been given together with the number and the dates of the execution and filing of the same and the sum for which the same has been given and the time or times (if any) when the same is thereby made payable according to the form contained in the schedule A hereunder given which said book or books and every bill of sale or copy thereof filed in the said office may be searched and viewed by all persons at all reasonable times paying to the officer for every search against one person the sum of sixpence and no more and that in addition to the last-mentioned book the said prothonotary shall keep another book or index in which he shall cause to be fairly inserted as and when such bills of sale are filed in manner aforesaid the name addition and description of the person making or giving the same or of the person against whom such process shall have issued as the case may be and also of the persons to whom or in whose favor the same shall have been given but containing no further particulars thereof which last-mentioned book or index all persons shall be permitted to search for themselves

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Defeasance or condition of every bill of sale to be written on the same paper or parchment.

19 Vic. No. 2 s. 2.

1 Pring 113.

17 & 18 Vic. c. 36 s. 2.

Officer of court to keep a book containing particulars of each bill of sale.

19 Vic. No. 2 s. 3.

1 Pring 113.

17 & 18 Vic. c. 36 s. 3.

31 VICTORIA No. 36. themselves paying to the officer for such last-mentioned search the sum of one shilling.

SCHEDULE A.

Schedule.
19 Vic. No. 2.
1 Pring 114.
17 & 18 Vic. c. 36.

Name &c. of the person making or giving the bill of sale or of the person divested of property.	Name &c. of the person to whom made or given.	Whether bill of sale assignment transfer or what other assurance and whether absolute or conditional and number.	Date of execution.	Date of filing.	Sum for which made or given.	When and how payable.

Office fee of 2s. 6d. for filing bill of sale.

19 Vic. No. 2 s. 4.

1 Pring 112.

17 & 18 Vic. c. 36 s. 4.

Office copies or extracts to be given on paying as for copies of judgments.

17 & 18 Vic. c. 36 s. 5.

1 Pring 113.

Satisfaction may be entered.

19 Vic. No. 2 s. 6.

1 Pring 114.

17 & 18 Vic. c. 36 s. 6.

24. An office fee of two shillings and sixpence and no more shall be paid to the said registrar for filing and entering every such bill of sale or a copy thereof as aforesaid.

25. Any person shall be entitled to have an office copy or an extract of every bill of sale or of the copy thereof filed as aforesaid upon paying for the same at the like rate as for office copies of judgments in the said Supreme Court.

26. It shall be lawful for any judge of the said Supreme Court to order a memorandum of satisfaction to be written upon any bill of sale or copy thereof respectively as aforesaid if it shall appear to him that the debt (if any) for which such bill of sale is given as security shall have been satisfied or discharged.

Liens on Wool.

19 Vic. No. 2 s. 8.

1 Pring 112.

Right of lien to continuing clip of wool.

24 Vic. No. 10 s. 2.

1 Pring 974.

27. In all cases where any person shall make any *bond fide* advance of money or goods or give any valid promissory note or bill to any proprietor of sheep on condition of receiving in payment or as security only for such money goods promissory note or bill (as the case may be) the wool of the then next ensuing clip of such proprietor and where the agreement relating to such purchase or security shall be made in the form or to the effect in schedule B appended to this section and shall be duly registered within thirty days after the date of such agreement or within sixty days where the lienor shall reside further than six hundred miles from Brisbane by leaving in the office of the registrar of the Supreme Court a true copy thereof duly verified on oath before the said registrar or before any other public officer who may be duly authorised to administer an oath in that behalf within the jurisdiction where the sheep shall be depastured the person making such purchase or advance shall be entitled to the whole of the wool mentioned in such agreement whether such advance of money or goods or of such note or bill be before at or after the granting of any such preferable lien so long as the registered agreement relating thereto shall purport on the face of it to have been made in payment or as security for such advance and possession of such wool by the said proprietor shall be to all intents and purposes in the law the possession of the person or persons making such purchase or advance. Provided that when at any time such advance be repaid with such interest and commission as may be specified in any such agreement the possession and property of the said wool shall revert in such proprietor.

Right of lienor.

SCHEDULE

SCHEDULE B.

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In consideration of £ *bonâ fide* value which I admit to have received in money [or goods or both as the case may be] from A. B. I hereby give to the said A. B. a preferable lien [to the extent of the said advance] on the wool of the ensuing clip to be shorn from my flocks of sheep consisting in number of or thereabouts and now depasturing at in the said colony under the superintendence of It is further agreed that the said sheep shall be shorn by me or at my expense and that the wool thereof shall be delivered by me at to the order of the said A. B.

Schedule A.
24 Vic. No. 10.
1 Pring 977.

Dated day of A.D. (Signed) C. D.
Witness—

N.B. If the goods or money advanced be for the absolute purchase of the wool instead of the words in the brackets "to the extent of the said advance" insert the words "for the absolute purchase and whole value thereof."

28. When any person shall make any such *bonâ fide* advance or purchase as aforesaid the preferable lien of the lience making the same on the wool of the then next ensuing clip of such proprietor shall not be in anywise extinguished suspended impaired or otherwise prejudicially affected by any subsequent sale mortgage or other encumbrance whatsoever of the sheep mentioned and described in the registered agreement relating to any such preferable lien nor by the subsequent insolvency of the lienor but shall be as valid and effectual to all intents and purposes whatsoever against any such subsequent purchaser mortgagee encumbrancer or other claimant or possessor of the said sheep or against the trustees or assignees of such insolvent lienor as against the original proprietor thereof who granted such preferable lien Provided that if any such lienor subsequent mortgagee encumbrancer trustee or other claimant or possessor of such sheep shall neglect or refuse to shear and deliver the wool of any sheep for which any such preferable lien shall have been granted as aforesaid in pursuance of the agreement in that behalf contained in such preferable lien it shall be lawful for the lience his executors administrators or assigns to take possession of the sheep bearing such wool for the purpose of washing and shearing the same and all expenses attending such shearing and the conveyance of the wool to the place of abode of such lience or to such other place as may be named in said lien as the place of delivery shall be incorporated with and be deemed in law part of the amount secured by such lien.

Right of lience to wool.
24 Vic. No. 10 s. 3.
1 Pring 975.

Mortgages of Live Stock.

29. All mortgages of sheep cattle and horses which shall hereafter be made *bonâ fide* and for valuable consideration and where the names of the parties thereto and the particulars thereof shall be duly registered within thirty days after the date thereof in the office of the said registrar according to the jurisdiction wherein such mortgaged live stock shall be depastured in the form mentioned in schedule C appended to this section shall be valid in the law to all intents and purposes whether the money secured by the said mortgage be payable presently or not and notwithstanding the said mortgaged live stocks shall not be delivered over to the mortgagee but shall remain and continue in every respect as theretofore in the possession order and disposition of the said mortgagor and though the said mortgagor afterwards take the benefit of any law now or hereafter to be in force in the said colony for the relief of bankrupt or insolvent debtors Provided that no mortgage shall protect the same from the operation of

Right of mortgagee where possession in mortgagor.
24 Vic. No. 10 s. 4.
1 Pring 975.

31 VICTORIE No. 36. of any such law unless such mortgage shall have been executed at least sixty days before the date of the order for sequestration or unless the consideration thereof shall be an advance or loan made at the time of the execution of such mortgage.

SCHEDULE C.

24 Vic. No. 10.
Schedule B.
1 Pring 977.

Date of deed.	Name of mortgagor.	Name of mortgagee.	Consideration.	Numbers and description of mortgaged sheep cattle or horses and the brand or other distinctive mark and station where the same are depasturing as also the name of the principal superintendent or overseer.
	Name of witness or witnesses.			

Registration.

Particulars of registration by registrar.
24 Vic. No. 10 s. 5.
1 Pring 975.

30. The said registrar shall keep a separate and distinct registry from year to year of all such agreements for such purchases of wool or advances thereon and shall also keep a separate and distinct registry of the particulars of all such mortgages of sheep cattle and horses as aforesaid and shall be entitled to demand for every such registry thereof a fee of two shillings and sixpence and one shilling for each affidavit sworn before him or made in verification thereof and all searches shall be made by the said registrar or his deputy and no other person or persons on the receipt of a fee of two shillings and sixpence for each search.

Incidents of such Liens and Mortgages.

Lien granted by mortgagor.
24 Vic. No. 10 s. 9.
1 Pring 976.

31. It shall not be lawful for any lienor of wool or mortgagor of sheep so long as any mortgage or lien thereon executed by him or her shall remain unsatisfied to grant a further lien on such wool or or mortgage of such sheep without the written consent of the lienee or mortgagee any practice to the contrary notwithstanding.

Indorsement of liens.
24 Vic. No. 10 s. 10.
1 Pring 976.

32. All liens of wool or mortgages of live stock shall be transferable by indorsement and every such indorsement thereof shall give to the holder the same right title and interest therein as that held by the original lienee or mortgagee. Provided that all such transfers by indorsement shall be duly registered within thirty days after the date thereof in the office of the said registrar.

Satisfaction thereof.

Cancelling of preferable liens.
24 Vic. No. 10 s. 6.
1 Pring 976.

33. At the end of twelve calendar months next after the expiration of the year for which any such preferable lien upon wool shall have been given as aforesaid the said registrar may remove from the records of his office all such preferable liens and may destroy or cancel the same or at any time at the request of both parties to any such preferable liens may enter satisfaction on the same.

Registration of receipt from mortgagee.
24 Vic. No. 10 s. 11.
1 Pring 977.

34. In every case when the amount of principal and interest due upon any mortgage of live stock shall have been or shall be paid to the person entitled to receive the same or to his or her agent in that behalf and a receipt in writing for the amount so paid shall have been

been or shall be given signed by the party so entitled or by his or her agent acknowledging such payment to be in satisfaction of the mortgage it shall be lawful for the mortgagor his executors administrators or assigns to cause a copy of such receipt to be registered in the office of the said registrar on production to that officer of the original receipt and of the mortgage deed to which the same shall relate and from and after the time of the registration of such verified receipt such payment shall operate as an extinction of the mortgage and of the right and interest thereby created to all intents and purposes whatsoever but without prejudice to any second or subsequent mortgage affecting the same live stock or any part thereof then duly registered any such similar receipt in writing indorsed on the back of any such second or subsequent mortgage and registered as aforesaid shall operate as an extinction of such second or subsequent mortgage and all right title and interest thereby created.

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Penalties.

35. And whereas it is expedient with a view to increase the public confidence in the validity of such preferable liens on wool and mortgages on live stock to surround them with the penal provisions necessary for the punishment of frauds Be it therefore further enacted that any grantor of any such preferable lien on wool or of any mortgage of sheep cattle or horses and of their increase and progeny under this Act whether such grantor shall be principal or agent who shall afterwards by the sale or delivery of the wool under any such lien without the written consent of the licensee to any purchaser pawnee or other person or by selling steaming or boiling down or causing to be sold steamed or boiled down without such written consent as aforesaid the sheep whereon the same shall be growing with a view to defraud such licensee of such wool or of the value thereof or who shall after the due execution of any registry of any such mortgage without the written consent of the mortgagee thereof sell and dispose of or steam or boil down or cause to be sold and disposed of or to be steamed or boiled down any sheep cattle or horses or their increase or progeny or who shall in any way or by any means whatsoever or howsoever directly or indirectly destroy defeat invalidate or impair or any other person or persons who shall wilfully and knowingly incite aid or abet any such grantor directly or indirectly to defeat destroy invalidate or impair the right of property of any licensee in the wool of any sheep mentioned and described in any such registered agreement as aforesaid or the right of property of any such mortgagee as aforesaid in any sheep cattle or horses or their increase and progeny mentioned in any mortgage duly executed and registered as aforesaid under the provisions of this Act shall be severally held and deemed guilty of an indictable fraud and misdemeanor and being thereof duly convicted shall be severally liable in the discretion of the judge or court before whom any such offender shall be so convicted to fine or imprisonment or to both fine and imprisonment for any period not exceeding three years with or without hard labor at the discretion of such court or judge.

Frauds by mortgagor.
24 Vic. No. 10 s. 7.
1 Pring 976.

Rights of the Crown.

36. Nothing in the nine sections last preceding contained shall be construed to affect in any way the rights or prerogative of the Crown

Waste lands of Crown.
24 Vic. No. 10 s. 8.
1 Pring 976.

31 VICTORIE No. 36. Crown as to any of the waste lands described in any such liens or mortgages as the lands or stations where any such sheep horses or cattle may be depasturing.

Interpretation.

Interpretation,
27 Vic. No. 3 s. 1.
3 Pring 205.

37. The following terms in inverted commas shall for the purposes of the four sections next succeeding bear the meanings set against them respectively—

“Agricultural produce”—wheat maize sorghum barley oats lucerne grass whether for hay or for grain and other agricultural produce including cotton tobacco rice and sugar-cane.

“Horticultural produce”—oranges grapes whether grown as fruit or for wine or spirit and fruit of any other kind.

Liens on Crops.

Liens on yearly crops
realized.
27 Vic. No. 3 s. 2.
3 Pring 205.

38. Whenever any person shall make any *bonâ fide* advance of money or goods to any holder of land on condition of receiving as security for the same the growing crop or crops of agricultural or horticultural produce on any such land and where the agreement relating to such security shall be made in the form or to the effect of the schedule hereto and shall be duly registered within thirty days after its date by leaving in the office of the registrar of the Supreme Court a true copy thereof verified on oath before the said registrar or any commissioner for taking affidavits the person making such advance whether before at or after the date of such agreement shall have a preferable lien upon and be entitled to the whole of such crop or crops and the whole produce thereof and possession thereof by the lienor shall be to all intents and purposes in the law the possession of the person making such advance. Provided that such registered agreement purports on the face of it to have been made as security for such advance. Provided also that on repayment of such advance with interest specified in such agreement the possession and property of such crop or crops shall revert to and vest in the lienor.

Liens not affected by
sale &c. of land.
27 Vic. No. 3 s. 3.
3 Pring 206.

39. No such lien duly made and registered shall be extinguished or otherwise prejudicially affected by any sale mortgage or other encumbrance of or upon the land on which any such crop shall be growing nor by the death or insolvency of the lienor. Provided that if such lienor his executors administrators or assigns shall neglect or refuse either to pay off the whole of such advance with interest as agreed upon or to give up such crop to the licensee thereof in pursuance of the agreement such licensee his executors administrators or assigns may enter into possession thereof and may gather carry away and sell the same and may apply the proceeds in paying himself such advance with interest as aforesaid and all expenses of clearing carrying away making marketable and selling any such crop and shall pay the balance to the lienor his executors administrators or assigns. Provided that if such lienor be a tenant then the licensee shall before selling any such crop or crops pay to the landlord of the land whereon such crop or crops shall be growing such sum of money as may be due to him for rent at the time of carrying away such crop or crops and the licensee may repay himself the sum so paid out of the proceeds of the sale of such crop or crops before paying over the balance to the lienor provided that the

Provisos.

sum

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List in registry open
to inspection.
27 Vic. No. 3 s. 4.
3 Pring 206.

Duration of lien.
27 Vic. No. 3 s. 5.
3 Pring 206.

Penalties for frauds
on licence.
27 Vic. No. 3 s. 6.
3 Pring 206.

Form of agreement.

Schedule of 27 Vio.
No. 3.
3 Pring 207.

(Signed) _____ A. B.

Gaming Securities.

S All notes &c. mort-
gages &c.

31 VICTORIA No. 36. by gaming or playing at cards dice tables tennis bowls or other game or games whatsoever or by betting on the sides or hands of such as do game at any of the games aforesaid or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid or lent or advanced at the time and place of such play to any person or persons so gaming or betting as aforesaid or that shall during such play so play or bet that shall be deemed and taken to have been made drawn accepted given or executed for an illegal consideration to all intents and purposes whatsoever any statute law or usage to the contrary thereof in any wise notwithstanding Provided always that nothing herein contained shall prejudice or affect any note bill or mortgage which would have been good and valid if this Act had not been passed.

Where the consideration is for money won by gaming.

Or for repayment of money lent at such gaming &c. shall be deemed made &c. for illegal consideration.

9 Ann c. 14 s. 1.

5 & 6 Wm. IV. c. 41 s. 1.

Vide 5 & 6 Wm. IV. c. 41 s. 3.

Fraudulent assurances of lands or goods to deceive creditors shall be void. 50 Edw. III. c. 6.

44. Because that divers people inherit of divers lands and tenements borrowing divers goods in money or in merchandise of divers people of this colony do give their tenements and chattels to their friends by collusion thereof to have the profits at their will and do live a great time with an high countenance of another man's goods and profits of the said lands tenements and chattels till the said creditors shall be bound to take a small parcel of their debt and release the remnant now therefore be it enacted That if it be found that such gifts be so made by collusion that the said creditors shall have execution of the said tenements and chattels as if no such gift had been made.

All deeds of gift of goods to defraud creditors shall be void. 3 Hen. VII. c. 4.

45. That where oftentimes deeds of gift of goods and chattels have been made to the intent to defraud their creditors of their duties and that the person or persons that maketh the said deed of gift occupieth and liveth with the said goods and chattels their creditors being unpaid be it enacted That all deeds of gift of goods and chattels made or to be made of trust to the use of that person or persons that made the same deed of gift be void and of none effect.

Fraudulent deeds made to avoid the debts of others shall be void and the penalties of the parties to such fraudulent assurances.

13 Eliz. c. 5 preamble.

46. For the avoiding and abolishing of feigned covinous and fraudulent feoffments gifts grants alienations conveyances bonds suits judgments and executions as well of lands and tenements as of goods and chattels which feoffments gifts grants alienations conveyances bonds suits judgments and executions have been and are devised and contrived of malice fraud covin collusion or guile to the end purpose and intent to delay hinder or defraud creditors and others of their just and lawful actions suits debts accounts damages penalties forfeitures not only to the let or hindrance of the due course and execution of law and justice but also to the overthrow of all true and plain dealing bargaining and chevisance between man and man without the which no commonwealth or civil society can be maintained or continued Be it therefore declared and enacted That all and every feoffment gift grant alienation bargain and conveyance of lands tenements hereditaments goods and chattels or of any of them or of any lease rent common or other profit or charge out of the same lands tenements hereditaments goods and chattels or any of them by writing or otherwise and all and every bond suit judgment and execution at any time had and made or at any time hereafter to be had or made to or for any intent or purpose before declared and expressed shall be from

All fraudulent conveyances made to avoid the debt or duty of others shall be void. 13 Eliz. c. 5 s. 2.

henceforth

henceforth deemed and taken (only as against that person or persons his or their heirs successors executors administrators and assigns and every of them whose actions suits debts accounts damages penalties or forfeitures by such guileful covinous or fraudulent devices and practices as is aforesaid are shall or might be in anywise disturbed hindered delayed or defrauded) to be clearly and utterly void frustrate and of none effect any pretence color feigned consideration expressing of use or any other matter or thing to the contrary notwithstanding.

47. And be it enacted all and every the parties to such feigned covinous or fraudulent feoffment gift grant alienation bargain conveyance bonds suits judgments executions and other things before expressed and being privy and knowing of the same or any of them which at any time shall wittingly and willingly put in use avow maintain justify or defend the same or any of them as true simple and done had or made *bonâ fide* and upon good consideration or shall alien or assign any the lands tenements goods leases or other things before mentioned to him or them conveyed as is aforesaid or any part thereof shall incur the penalty and forfeiture of one year's value of the said lands tenements and hereditaments leases rents commons or other profits of or out of the same and the whole value of the said goods and chattels and also so much money as are or shall be contained in any such covinous and feigned bond the one moiety whereof to be the Queen's Majesty her heirs and successors and the other moiety to the party or parties aggrieved by such feigned and fraudulent feoffment gift grant alienation bargain conveyance bonds suits judgments executions leases rents commons profits charges and other things aforesaid to be recovered in the Supreme Court by action of debt bill plaint or information wherein no essoin protection or wager of law shall be admitted for the defendant or defendants and also being thereof lawfully convicted shall suffer imprisonment for one half year without bail or mainprise.

The forfeiture of the parties to fraudulent deeds.

13 Eliz. c. 5 s. 3.

48. Provided also and be it enacted That this Act or anything therein contained shall not extend to any estate or interest in lands tenements hereditaments leases rents commons profits goods or chattels had made conveyed or assured or hereafter to be had made conveyed or assured which estate or interest is or shall be upon good consideration and *bonâ fide* lawfully conveyed or assured to any person or persons or bodies politic or corporate not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin fraud or collusion as is aforesaid anything before mentioned to the contrary hereof notwithstanding Forasmuch as not only the Queen's Most Excellent Majesty but also divers of Her Majesty's good and loving subjects and bodies politic and corporate after conveyances obtained or to be obtained and purchases made or to be made of lands tenements leases estates and hereditaments for money or other good consideration may have incur and receive great loss and prejudice by reason of fraudulent and covinous conveyances estates gifts grants charges and limitations of uses heretofore made or hereafter to be made of in or out of lands tenements or hereditaments so purchased or to be purchased which said gifts grants charges estates uses and conveyances

Estates made upon good consideration and *bonâ fide*.

13 Eliz. c. 5 s. 6.

Preamble.

27 Eliz. c. 4.

31 VICTORIA No. 36. conveyances were or hereafter shall be meant and intended by the parties that so make the same to be fraudulent and covinous of purpose and intent to deceive such as have purchased or shall purchase the same or else by the secret intent of the parties to the same be to their own proper use and at their free disposition colored nevertheless by a feigned countenance and show of words and sentences as though the same were made *bonâ fide* for good causes and upon just and lawful considerations Now for remedy of which inconveniences and for the avoiding of such fraudulent feigned and covinous conveyances gifts grants charges uses and estates and for the maintenance of upright and just dealing in the purchasing of lands tenements and hereditaments be it enacted That all and every conveyance grant charge lease estate incumbrance and limitation of use or uses of in or out of any lands tenements or other hereditaments whatsoever had or made any time heretofore or at any time hereafter to be had or made for the intent and of purpose to defraud and deceive such person or persons bodies politic or corporate as have purchased or shall afterwards purchase in fee-simple fee-tail for life lives or years the same lands tenements and hereditaments or any part or parcel thereof so formerly conveyed granted leased charged encumbered or limited in use or to defraud and deceive such as have or shall purchase any rent profit or commodity in or out of the same or any part thereof shall be deemed and taken only as against that person and persons bodies politic and corporate his and their heirs successors executors administrators and assigns and against all and every other person and persons lawfully having or claiming by from or under them or any of them which have purchased or shall hereafter so purchase for money or other good consideration the same lands tenements or hereditaments or any part or parcel thereof or any rent profit or commodity in or out of the same to be utterly void frustrate and of none effect any pretence color feigned consideration or expressing of any use or uses to the contrary notwithstanding.

Fraudulent conveyances made to deceive purchasers shall be void.
27 Eliz. c. 4 s. 2.

The penalty of the parties to fraudulent conveyances who do avow the same.
27 Eliz. c. 4 s. 3.

49. All and every the parties to such feigned covinous and fraudulent gifts grants leases charges or conveyances before expressed or being privy and knowing of the same or any of them which shall wittingly and willingly put in use avow maintain justify or defend the same or any of them as true simple and done had or made *bonâ fide* or upon good consideration to the disturbance or hindrance of the said purchaser or purchasers lessees or grantees or of or to the disturbance or hindrance of their heirs successors executors administrators or assigns or such as have or shall lawfully claim anything by from or under them or any of them shall incur the penalty and forfeiture of one year's value of the said lands tenements and hereditaments so purchased or charged the one moiety whereof to be to the Queen's Majesty Her Heirs and Successors and the other moiety to the party or parties grieved by such feigned and fraudulent gift grant lease conveyance encumbrance or limitation of use to be recovered in the Supreme Court by action of debt bill plaint or information wherein no essoin or protection shall be admitted for the

the defendant or defendants and also being thereof lawfully convicted shall suffer imprisonment for one half year without bail or mainprise. 31 VICTORIA No. 36.

50. Provided also and be it enacted That this Act or anything therein contained shall not extend or be construed to impeach defeat make void or frustrate any conveyance assignment of lease assurance grant charge lease estate interest or limitation of use or uses of in to or out of any lands tenements or hereditaments heretofore at any time had or made or hereafter to be had or made upon or for good consideration and *boná fide* to any person or persons bodies politic or corporate anything before mentioned to the contrary hereof notwithstanding. Conveyances made upon good considerations and *boná fide*. 27 Eliz. c. 4 s. 4.

51. And be it further enacted That if any person or persons having heretofore made or who shall hereafter make any conveyance gift grant demise charge limitation of use or uses or assurance of in or out of any lands tenements or hereditaments with any clause provision article or condition of revocation defermination or alteration at his or their will or pleasure of such conveyance assurance grants limitations of uses or estates of in or out of the said lands tenements or hereditaments or of in or out of any part or parcel of them contained or mentioned in any writing deed or indenture of such assurance conveyance grant or gift and after such conveyance grant gift demise charge limitation of uses or assurance so made or had shall or do bargain sell demise grant convey or charge the same lands tenements or hereditaments or any part or parcel thereof to any person or persons bodies politic and corporate for money or other good consideration paid or given (the said first conveyance assurance gift grant demise charge or limitation not by him or them revoked made void or altered according to the power and authority reserved or expressed unto him or them in and by the said secret conveyance assurance gift or grant) that then the said former conveyance assurance gift demise and grant as touching the said lands tenements and hereditaments so after bargained sold conveyed demised or charged against the said bargainees vendees lessees grantees and every of them their heirs successors executors administrators and assigns and against all and every person and persons which have shall or may lawfully claim anything by from or under them or any of them shall be deemed taken and adjudged to be void frustrate and of none effect by virtue and force of this present Act. Lands first conveyed with condition of revocation or alteration and after sold for money or other good consideration. 27 Eliz. c. 4 s. 5.

52. Provided nevertheless that no lawful mortgage made or to be made *boná fide* and without fraud or covin upon good consideration shall be impeached or impaired by force of this Act but shall stand in the like force and effect as the same should have done if this Act had never been had or made anything in this Act to the contrary in anywise notwithstanding. Mortgages lawfully made. 27 Eliz. c. 4 s. 6.

Partnership.

53. Limited partnerships may be formed for the transaction of agricultural mining mercantile mechanical manufacturing or other business by any number of persons upon the terms and subject to the conditions and liabilities hereinafter prescribed Provided that nothing herein shall authorise any such partnership for the purpose either of banking or insurance. Limited partnerships may be formed except for banking and insurance. 17 Vic. No. 9 s. 1. 2 Pring 1043.

31 VICTORIA No. 36.

General and special
partners and their
liabilities.
17 Vic. No. 9 s. 2.
2 Pring 1043.

Certificate to be made
by the partners speci-
fying names capital
&c.
17 Vic. No. 9 s. 3.
2 Pring 1043.

Style of partnership.
17 Vic. No. 9 s. 4.
2 Pring 1043.

Certificate to be
acknowledged and
recorded.
17 Vic. No. 9 s. 5.
2 Pring 1043.

If false or shall be
liable as general
partners.

Certificate to be pub-
lished for four weeks.
17 Vic. No. 9. s. 6.
2 Pring 1043.

Duration of part-
nership limited.
17 Vic. No. 9 s. 7.
2 Pring 1043.

54. Every such partnership may consist of general partners who shall be jointly and severally responsible as general partners are now by law and of persons to be called special partners who shall contribute to the common stock specific sums in money as capital beyond which they shall not be responsible for any debt of the partnership except in the cases hereinafter provided for.

55. All the persons forming any such partnership shall before commencing business sign a certificate containing the style of the firm under which the partnership is to be conducted the names and places of residence of all the partners distinguishing the general from the special partners the amount of capital which each special partner contributes and also if any the amount contributed by the general partners to the common stock the general nature of the business to be transacted the principal place at which it is to be transacted the time when such partnership is to commence and when it is to terminate.

56. Such style or firm shall contain the names of general partners only or the name of one such partner with in either case the addition of the words "and another" or "and others" and the general partners only shall transact the business of the partnership and if in the carrying on of such business or in any contract connected therewith the name of any special partner shall be used with his consent or privity or if he shall personally make any contract respecting the concerns of the partnership every such special partner shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used or as to which he shall have so contracted.

57. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some justice of the peace and registered in the office of the registry of deeds in Brisbane in a book to be kept for that purpose open to public inspection and if any false statement shall be made in any such certificate all the persons interested in the partnership shall be liable for all the engagements thereof as general partners Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person may have been prejudiced thereby in which case the special partners shall be liable to the person so prejudiced.

58. A copy of such certificate shall for four weeks next after such registration be published once at least in the *Gazette* and in some newspaper printed nearest to the intended principal place of business of the partnership and in case such publication be not so made the partnership shall be deemed general.

59. No partnership under this Act shall be entered into for a longer period than seven years but such partnership may be renewed at the end of that period or at the termination of any shorter period for which a partnership may be formed provided that the partners sign a fresh certificate in the terms of this Act and acknowledge and register the same in the same manner as if the partnership were an original partnership with limited liability.

60. Upon

60. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration a certificate thereof shall be signed acknowledged registered and published in like manner as the original certificate and every partnership which shall be renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general.

31 VICTORIA No. 36.
Provision for renewal of partnership.
17 Vic. No. 9 s. 8.
2 Pring 1043.

61. During the continuance of any partnership under the provisions of this Act no part of the certified capital thereof shall be withdrawn nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate and if any part of such capital shall be so withdrawn or any such division be made so that at any time during the continuance or at the termination of the partnership the assets shall not be sufficient to pay the partnership debts the special partners shall severally be liable to refund every sum by them respectively received in diminution of such capital or by way of such interest or profit and all such sums may be recovered as money had and received by them respectively to the use of the general partners and may in the case of any judgment having been obtained against the general partners be recovered by the plaintiff against the special partners or either of them by process of execution to be issued under such judgment by leave of the Supreme Court.

Capital stock not to be withdrawn.
17 Vic. No. 9 s. 9.
2 Pring 1044.

62. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners in which cases every special partner who shall have become liable as a general partner may be joined in the suit as a defendant at the discretion of the party suing.

Suits to be by and against general partners.
17 Vic. No. 9 s. 10.
2 Pring 1044.

63. No dissolution of a limited partnership shall take place except by operation of law before the time specified in the certificate unless a notice of such dissolution shall be signed acknowledged registered and published in like manner as the original certificate.

Dissolutions how effected.
17 Vic. No. 9 s. 11.
2 Pring 1044.

64. In all cases not hereinbefore otherwise provided for all the members of a limited partnership shall be subject to the liabilities and entitled to the rights of general partners.

Liabilities not specially provided for.
17 Vic. No. 9 s. 12.
2 Pring 1044.

65. The general partners shall be liable to account to each other and to the special partners for their management of the concern both in law and equity as other partners now are by law.

Accounting.
17 Vic. No. 9 s. 13.
2 Pring 1044.

66. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage and shall also be liable to an indictment for a misdemeanor punishable by fine or imprisonment or both in the discretion of the court by which he shall be tried.

Frauds by partners.
17 Vic. No. 9 s. 14.
2 Pring 1044.

67. If the general partners shall not at all times cause regular books of account to be kept or shall not have the same open at all reasonable times to the inspection of the special partners such special partners shall on default herein be entitled to have the partnership dissolved and the accounts thereof taken by the Supreme Court.

Books of account to be kept and to be open to inspection.
17 Vic. No. 9 s. 15.
2 Pring 1044.

68. The special partners shall be bound to see that such books are so kept and if such books shall not be so kept or shall with the knowledge

As to liability of special partners if proper books be not

31 VICTORIA No. 36. knowledge or privity of the special partners or any of them be kept
kept or be incorrectly incorrectly or contain any false or deceptive entries whereby the
ascertainment of the matters mentioned in the first part of the sixty-
first section hereof shall or may be affected the certified capital of
such special partners or such one or more of them having such
knowledge or privity as aforesaid shall as against creditors be deemed
to have been withdrawn and they or he shall be liable accordingly
under the provisions of the said sixty-first section hereof.

Commencement and Short Title.

Commencement of
Act.

Short title.

69. This Act shall commence on the thirty-first day of
December one thousand eight hundred and sixty-seven and may be
referred to as the "*Mercantile Act of 1867.*"

An Act to Consolidate and Amend the Laws 31 VICTORIA No. 15.
relating to Bills of Exchange Promissory
Notes and Cheques. [28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to bills of exchange promissory notes and cheques Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

1. The words bill of exchange in this Act shall include promissory note and *vice versa* unless the contrary appear. Meaning of words.

New Writ and Judgment.

2. All actions upon bills of exchange or promissory notes commenced within six months after the same shall have become due and payable may be by writ of summons in the special form contained in schedule A to this Act annexed and indorsed as therein mentioned and it shall be lawful for the plaintiff on filing an affidavit of personal service of such writ within the jurisdiction of the court or an order for leave to proceed as provided by the *Common Law Process Act of 1867* and a copy of the writ of summons and the indorsements thereon in case the defendant shall not have obtained leave to appear and have appeared to such writ according to the exigency thereof at once to sign final judgment in the form contained in schedule B to this Act annexed (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the writ together with interest at the rate specified (if any) to the date of the judgment and a sum for costs to be fixed by the registrar of the Supreme Court subject to the approval of the judges thereof or a majority of them whereof the Chief Justice shall be one unless the plaintiff claim more than such fixed sum in which case the costs shall be taxed in the ordinary way and the plaintiff may upon such judgment issue execution forthwith. All actions upon bills of exchange &c. may be by writ of summons in form in schedule. Plaintiff on filing affidavit of personal service may at once sign final judgment inform in schedule. 18 & 19 Vic. c. 67 s. 1.

3. The holder of any bill of exchange or promissory note may if he think fit issue one writ of summons according to this Act against all or any number of the parties to such bill or note and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively and all subsequent proceedings against such respective parties shall be in like manner so far as may be as if separate writs of summons had been issued. Holder of bill of exchange may issue one summons against all or any of the parties to the bill. 18 & 19 Vic. c. 67 s. 6.

Defence.

4. A judge of the Supreme Court shall upon application within the period limited for obtaining leave to appear and appearing which period shall be the same as in an ordinary writ of summons give leave to appear to such writ and to defend the action on the defendant paying into court the sum indorsed on the writ or upon affidavits satisfactory to the judge which disclose a legal or equitable defence or such facts as would make it incumbent on the holder to prove consideration or such other facts Defendant showing a defence upon the merits to have leave to appear. 18 & 19 Vic. c. 67 s. 2. 20 Vic. No. 30 ss. 1 & 2 and 3. 1 Pring 111.

31 VICTORIA No. 15. as the judge may deem sufficient to support the application and on such terms as to security or otherwise as to the judge may seem meet.

Setting aside Judgment.

Judge may under special circumstances set aside judgment.
18 & 19 Vic. c. 67 s. 3.

5. After judgment the court or a judge may under special circumstances set aside the judgment and if necessary stay or set aside execution and may give leave to appear to the writ and to defend the action if it shall appear to be reasonable to the court or judge so to do and on such terms as to the court or judge may seem just.

Deposit of Bill.

Judge may order bill to be deposited with officer of court in certain cases.
18 & 19 Vic. c. 67 s. 4.

6. In any proceedings under this Act it shall be competent to the court or a judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the court and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

Noting.

Remedy for the recovery of expenses of noting non-acceptance of dishonored bill.
18 & 19 Vic. c. 67 s. 5.

7. The holder of every dishonored bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment or otherwise by reason of such dishonor as he has under this Act for the recovery of the amount of such bill or note.

Rules.

Common Law Process and Practice Acts and rules incorporated with this Act.
18 & 19 Vic. c. 67 s. 7.

8. The provisions of all statutes and all rules heretofore made relating to actions at common law shall so far as the same are or may be made applicable extend and apply to all proceedings to be had or taken under this Act.

Inferior Courts.

The Governor may direct Act to apply to inferior courts.
18 & 19 Vic. c. 67 s. 9.

9. It shall be lawful for the Governor in Council from time to time by an Order in Council to direct that all or any part of the provisions of this Act shall apply to all or any inferior court or courts of record (not being a small debts court or courts) and within three months after such order shall have been made and published in the *Gazette* and any such order may be in like manner from time to time altered and annulled.

Acceptance.

Acceptance of a bill inland or foreign to be in writing on it and signed by the acceptor or his agent.
28 Vic. No. 6 s. 6.
3 Pring 227.
19 & 20 Vic. c. 97 s. 6.

10. No acceptance of any bill of exchange whether inland or foreign made after the thirty-first day of December one thousand eight hundred and sixty-four shall be sufficient to bind or charge any person unless the same be in writing on such bill or if there be more than one part of such bill on one of the said parts and signed by the acceptor or some person duly authorised by him.

1 & 2 Geo. IV. c. 7 s. 2.
3 & 4 Anne c. 9 s. 5.

11. If any person shall accept a bill of exchange payable at the house of a banker or other place without further expression in his acceptance such acceptance shall be deemed and taken to be to all intents and purposes a general acceptance of such bill but if the acceptor shall in his acceptance express that he accepts the bill payable at the banker's house or other place only and not otherwise or elsewhere such acceptance shall be deemed and taken to be to all intents and purposes a qualified acceptance of such bill and the acceptor shall not be liable to pay the said bill except in default of payment when such payment shall have been first duly demanded at such banker's house or other place.

Bills accepted payable at a banker's or other place deemed a general acceptance.

1 & 2 Geo. IV. c. 78 s. 1.

Bills accepted payable at a bankers or other place only deemed a qualified acceptance.

Crossing

Crossing Cheque.

31 VICTORIA No. 15.

12. Whenever a cheque or draft on any bank payable to bearer or to order on demand shall be issued crossed with the name of a bank or with two transverse lines with the word "bank" or any abbreviation thereof or should the crossing include in addition to the above the word "credit" or any abbreviation thereof followed by the name of some individual or firm such crossing shall be deemed a material part of the cheque or draft and except as hereinafter mentioned shall not be obliterated or added to or altered by any person whomsoever after the issuing thereof and the bank upon which such cheque or draft shall be drawn shall not pay such cheque or draft to any other than the bank with the name of which such cheque or draft shall be so crossed or if the same be crossed as aforesaid without the name of a bank to any other than a bank and the bank receiving payment of the same if the said cheque be crossed in favor of any individual or firm shall not pay the same to the credit of any other than the account of such individual or firm.

The crossing to be deemed a material part of a cheque or draft &c.
19 & 20 Vic. c. 25 s. 1.
25 Vic. No. 4 s. 1.
1 Pring 132.

13. Whenever any such cheque or draft shall have been issued uncrossed or shall be crossed with the word "bank" or any abbreviation thereof and without the name of any bank any lawful holder of such cheque or draft while the same remains so uncrossed or crossed with the word "bank" or any abbreviation thereof without the name of any bank may cross the same with the name of a bank and whenever any such cheque or draft shall be uncrossed any such lawful holder may cross the same with the word "bank" or any abbreviation thereof with or without the name of a bank or may add the word "credit" or any abbreviation thereof followed by the name of any individual or firm and any such crossing as in this section mentioned shall be deemed a material part of the cheque or draft and shall not be obliterated or altered or added to except as before mentioned by any person whomsoever after the making thereof and the bank upon which such cheque or draft shall be drawn shall not pay such cheque or draft to any other than the bank with the name of which such cheque or draft shall be so crossed as last aforesaid.

The lawful holder of a cheque uncrossed or crossed "bank" may cross the same with the name of a bank.
25 Vic. No. 4 s. 2.
1 Pring 132.

14. Provided always that any bank paying or receiving payment of a cheque or draft which does not at the time when it is presented for payment plainly appear to be or to have been obliterated added to or altered as aforesaid shall not be in any way responsible or incur any liability nor shall such payment be questioned by reason of such cheque having been so crossed as aforesaid or having been so obliterated added to or altered as aforesaid and by reason of the same having been paid to an individual and not to a bank or other than the bank or person or firm with whose name or names such cheque or draft shall have been so crossed unless such bank shall have acted *malá fide* or been guilty of negligence in so paying or crediting such cheque.

Bank not to be responsible for paying a cheque which does not plainly appear to have been crossed or altered.
25 Vic. No. 4 s. 4.
1 Pring 132.

15. In the construction of the four sections next preceding the word "bank" shall include any person or persons or corporation or joint stock company acting as a banker or bankers.

Interpretation of the word "bank."
19 & 20 Vic. c. 25 s. 2.
25 Vic. No. 4 s. 5.
1 Pring 132.

Cheques payable to Order on Demand.

16. Any draft or order drawn upon a banker for a sum of money payable to order on demand which shall when presented for payment purport to be indorsed by the person to whom the same shall be drawn payable shall be a sufficient authority to such banker to pay the amount

Drafts on bankers payable to order on demand sufficient authority for payment without proof of indorsement.

31 VICTORIA No. 15. of such draft or order to the bearer thereof and it shall not be incumbent
 16 & 17 Vic. c. 59 on such banker to prove that such indorsement or any subsequent indorse-
 s. 19. ment was made by or under the direction or authority of the person to
 whom the said draft or order was or is made payable either by the drawer
 or any indorser thereof.

Lost Bill.

Bills lost or mis-
 carried drawer to give
 another.
 9 & 10 Wm. III.
 c. 17 s. 3.

17. In case any valuable inland bill or bills of exchange shall happen to be lost or miscarried within the time limited for payment of the same then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given the person or persons to whom they are and shall be delivered giving security if demanded to the said drawer to indemnify him against all persons whatsoever in case the said bill of exchange so alleged to be lost or miscarried shall be found again.

Actions on lost in-
 struments.
 20 Vic. No. 31 s. 53.
 2 Pring 1654.
 17 & 18 Vic. c. 125
 s. 87.

18. In case of any action founded upon a bill of exchange or negotiable instrument it shall be lawful for the court or a judge to order that the loss of such instrument shall not be set up provided that an indemnity is given to the satisfaction of the court or judge or the prothonotary against the claims of any other person upon such negotiable instrument.

Maturity of Bill.

Where bills of ex-
 change and promissory
 notes become
 payable on Good Fri-
 day the same shall
 be payable on the day
 before and the hold-
 ers thereof may protest
 the same for non-
 payment on such pre-
 ceeding day.
 39 & 40 Geo. III.
 c. 42.

19. Where such bills or notes become due and payable on Good Friday the same shall be payable on the day before Good Friday and the holder or holders of such bills or notes may note and protest the same for non-payment on the day preceding Good Friday in like manner as if the same had fallen due and become payable on the day preceding Good Friday and such noting and protests shall have the same effect and operation at law as if such bills and notes had fallen due and become payable on the day preceding Good Friday in the same manner as is usual in the cases of bills and notes coming due on the day before any Lord's Day commonly called Sunday and before the feast of the nativity or birthday of our Lord commonly called Christmas Day.

Where bills of ex-
 change becoming due
 on the day preceding
 Good Friday or
 Christmas Day are
 dishonored notice
 thereof may be given
 on the day after such
 Good Friday &c.
 7 & 8 Geo. IV.
 c. 15 s. 1.

20. In all cases where bills of exchange or promissory notes shall be made payable on the day preceding any Good Friday or on the day preceding any Christmas Day it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonor thereof until the day next after such Good Friday or Christmas Day and whenever Christmas Day shall fall on a Monday it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday to give notice of the dishonor thereof until the Tuesday next after such Christmas Day and every such notice given as aforesaid shall be valid and effectual to all intents and purposes.

Bills of exchange
 becoming due on fast
 or thanksgiving days
 to be payable on the
 day next preceding
 such fast or thanks-
 giving day.
 7 & 8 Geo. IV.
 c. 15 s. 2.

21. In all cases where bills of exchange or promissory notes shall become due and payable on any day appointed by Her Majesty's proclamation or by the Governor's proclamation for a day of solemn fast or a day of thanksgiving in this colony the same shall be payable on the day next preceding such day of fast or day of thanksgiving and in case of non-payment may be noted and protested on such preceding day and as well in such cases as in the case of bills of exchange and promissory notes becoming due and payable on the day preceding any such day of fast

or

or day of thanksgiving it shall not be necessary for the holder or holders of such bills of exchange and promissory notes to give notice of the dishonor thereof until the day next after such day of fast or day of thanksgiving and whensoever such day of fast or day of thanksgiving shall be appointed on a Monday it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday to give notice of the dishonor thereof until the Tuesday next after such day of fast or day of thanksgiving respectively and every such notice so given as aforesaid shall be valid and effectual to all intents and purposes.

22. Good Friday and Christmas Day and every such day of fast or thanksgiving so appointed by Her Majesty or by the Governor is and shall for all other purposes whatsoever as regards bills of exchange and promissory notes be treated and considered as the Lord's Day commonly called Sunday.

31 VICTORIA No. 15.
—
Good Friday Christmas Day &c. as regards bills of exchange to be treated as the Lord's Day.
7 & 8 Geo. IV.
c. 15 s. 3.

23. When bills are accepted *supra* protest for honor or have a reference thereon in case of need it shall not be necessary to present such bills to the acceptors or acceptor for honor or to the referees or referee until the day following the day on which such bills shall become due and if the place of address on such bill of such acceptors or acceptor for honor or of such referees or referee shall be in any city town or place other than in the city town or place where such bill shall be therein made payable then it shall not be necessary to forward such bill for presentment for payment to such acceptors or acceptor for honor or referees or referee until the day following the day on which such bill shall become due.

Bills of Exchange need not be presented to acceptors for honor or referees till the day following the day on which they become due.
6 & 7 Wm. IV.
c. 58 s. 1.

24. If the day following the day on which such bill shall become due shall happen to be a Sunday Good Friday or Christmas Day or a day appointed by the Queen's or the Governor's proclamation for solemn fast or thanksgiving then it shall not be necessary that such bill shall be presented for payment or be forwarded for such presentment for payment to such acceptors or acceptor for honor or referees or referee until the day following such Sunday Good Friday Christmas Day or solemn fast or day of thanksgiving.

If the following day be a Sunday &c. then on the day following Sunday &c.
6 & 7 Wm. IV.
c. 58 s. 2.

Protest.

25. Nothing herein contained shall render any protest necessary or affect any protest made or to be made according to any law or custom now existing or shall extend to discharge any remedy that any person may have against the drawer acceptor or indorser of any bill.

Protest not rendered necessary.

26. From and after presentation and acceptance of an inland bill of exchange and after the expiration of the three days of grace the party to whom the said bill is made payable his servant agent or assigns may and shall cause the said bill to be protested by a notary public and in default of such notary public by any other substantial person of the city town or place in the presence of two or more credible witnesses refusal or neglect being first made of due payment of the same which protest shall be made and written under a fair written copy of the said bill of exchange in the words or form following—

Bills of exchange drawn in Queensland &c. of £5 or upwards payable at a certain number of days &c. after acceptance and three days after it is due may be protested.
9 & 10 Wm. III.
c. 17 s. 1.

Know all men that I A.B. on the day of at the usual place of abode of the said that is to say at [mention the city town township or parish and also the name of the hamlet street and number of the house] have demanded payment of the bill of which the above is the copy which the said did not pay wherefore I the said do hereby protest the said bill.

Dated this

day of

—or

31 VICTORIA No. 15. —or to the like effect and if the bill be not protested by a notary public the names places of abode and additions of the witnesses shall appear on the protest.

Place of Protest.

Bills of exchange expressed to be paid in any place other than the residence of the drawer if not accepted on presentment may be protested in that place unless amount paid to the holder.
2 & 3 Wm. IV.
c. 98.

27. All bills of exchange wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the residence of the drawer or drawers thereof and which shall not on the presentment for acceptance thereof be accepted shall or may be without further presentment to the drawer or drawers protested for non-payment in the place in which such bills of exchange shall have been by the drawer or drawers expressed to be payable unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof on the day on which such bills of exchange would have become payable had the same been duly accepted.

Promissory Notes.

Promissory notes may be assigned or indorsed and action maintained thereon as on inland bills of exchange.
3 & 4 Anne c. 9
s. 1.

28. All notes in writing that shall be made and signed by any person or persons body politic or corporate or by the servant or agent of any corporation banker goldsmith merchant or trader who is usually intrusted by him her or them to sign such promissory notes for him her or them whereby such person or persons body politic and corporate his her or their servant or agent as aforesaid doth or shall promise to pay to any other person or persons body politic and corporate his her or their order or unto bearer any sum of money mentioned in such note shall be taken and construed to be by virtue thereof due and payable to any such person or persons body politic and corporate to whom the same is made payable and also every such note payable to any person or persons body politic and corporate his her or their order shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants and the person or persons body politic and corporate to whom such sum of money is or shall be by such note made payable shall and may maintain an action for the same in such manner as he she or they might do upon an inland bill of exchange made or drawn according to the custom of merchants against the person or persons body politic and corporate who or whose servant or agent as aforesaid signed the same and that any person or persons body politic and corporate to whom such note that is payable to any person or persons body politic and corporate his her or their order is indorsed or assigned or the money therein mentioned ordered to be paid by indorsement thereon shall and may maintain his her or their action for such sum of money either against the person or persons body politic and corporate who or whose servant or agent as aforesaid signed such note or against any of the persons that indorse the same in like manner as in cases of inland bills of exchange.

Proviso against giving out notes.
3 & 4 Anne c. 9
s. 3.

29. No body politic or corporate shall have power by virtue of this Act to issue or give out any notes by themselves or their servants other than such as they might have issued if this Act had never been made.

Restriction on Amount of Negotiable Instrument.

All bills notes drafts orders or undertakings issued after the coming into operation of this Act for a sum less than twenty shillings to be invalid.
7 Geo. IV. No. 3 s. 4.
2 Cary 262.

30. All bills of exchange promissory notes drafts or undertakings in writing being negotiable or transferable for the payment of any sum of money less than twenty shillings sterling shall be and are hereby declared to be absolutely void and of no effect.

31. If

31. If any person or persons shall by any act device or means whatsoever make or issue any such note order draft or undertaking as aforesaid being for a less sum than twenty shillings sterling or shall re-issue negotiate or transfer any note order draft or undertaking for the payment of money for a sum of money less than twenty shillings sterling every such person shall forfeit and pay for every such offence a sum not exceeding twenty pounds sterling nor less than five pounds sterling at the discretion of the justice of the peace who shall hear and determine such offence.

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Penalty for issuing the same or for re-issuing such as were issued or made previously to the publication of this Act not exceeding twenty pounds nor less than five pounds.
7 Geo. IV. No. 3 s. 5.
2 Cary 263.

Penalties.

32. All fines and forfeitures imposed hereby shall and may be recovered in a summary way before any justice or justices of the peace.

Penalties how recoverable and their appropriation.
7 Geo. IV. No. 3 s. 6.
2 Cary 262.

Powers of the Court.

33. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223.
27 Vic. No. 14 s. 20.
3 Pring 631.

Commencement and Short Title.

34. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Bills of Exchange Act of 1867.*"

Commencement of Act.
Short title.

SCHEDULE A.

VICTORIA by the grace of God &c. To C. D. of

We warn you that unless within _____ days after the service of this writ on you inclusive of the day of such service you obtain leave from one of the judges of the Supreme Court to appear and do within that time appear in our Supreme Court at Brisbane in an action at the suit of A.B. the said A.B. may proceed to judgment and execution and further take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

18 & 19 Vic. c. 67.
Schedule A.
Section 2.

Witness &c.

Memorandum to be subscribed on the Writ.

N.B. This writ is to be served within six calendar months from the date hereof or if renewed from the date of such renewal including the day of such date and not afterwards.

Indorsement to be made on the Writ before Service thereof.

This writ was issued by E. F. of _____ attorney for the plaintiff or this writ was issued in person by A. B. who resides at [mention the city town or parish and also the name of the hamlet street and number of the house of the plaintiff's residence]

Indorsement.

The plaintiff claims _____ pounds principal and interest [or _____ pounds balance of principal and interest] due to him as the payee [or indorsee] of a bill of exchange or promissory note of which the following is a copy—

[Here copy bill of exchange or promissory note and all indorsements upon it.]

And if the amount thereof be paid to the plaintiff or his attorney within _____ days from the service hereof further proceedings will be stayed.

Notice.

BILLS OF EXCHANGE ACT.

*Notice.*31 VICTORIA No. 15.
—

Take notice that if the defendant do not obtain leave from one of the judges of the Supreme Court within twelve days after having been served with this writ inclusive of the day of such service to appear thereto and do not within such time cause an appearance to be entered for him in the said Supreme Court the plaintiff will be at liberty at any time after the expiration of such twelve days to sign final judgment for any sum not exceeding the sum above claimed and the sum of pounds for costs and issue execution for the same.

Leave to appear may be obtained on application at the Judges' Chambers Queen street Brisbane supported by affidavit showing that there is a defence to the action on the merits or that it is reasonable that the defendant should be allowed to appear in the action or by payment into court of the sum indorsed on the writ.

Indorsement to be made on the Writ after Service thereof.

This writ was served by X. Y. on L. M. (the defendant the defendants) on Monday the day of 186 .

—
SCHEDULE B.

In the Supreme Court of Queensland.

18 & 19 Vic. c. 67.
Schedule B.
Section 2.]

On the day of in the year of our Lord one thousand eight hundred [day of signing judgment.]

Queensland (to wit).

A. B. in his own person [or by his attorney] sued out a writ against C. D. indorsed as follows—[*Here copy indorsement of plaintiff's claim*] and the said C. D. has not appeared. Therefore it is considered that the said A. B. recover against the said C. D. pounds together with pounds for costs of suit.

An Act to Consolidate and Amend the Laws relating to Distress Replevin and Ejectment. 31 VICTORIA No. 16.
[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to distress replevin and ejectment Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

1. The words and expressions hereinafter mentioned which in their ordinary signification have a more confined or different meaning shall in the first thirty-one sections of this Act except where the nature of the provision or the context of the Act shall exclude such construction be interpreted as follows that is to say the word "land" shall extend to messuages and all other corporeal hereditaments whatsoever and also to any share estate or interest in them or any of them whether the same shall be a freehold or chattel interest and whether freehold or held according to any other tenure and the word "rent" shall extend to all services and suits for which a distress may be made and to all annuities and periodical sums of money charged upon or payable out of any land and upon any demise lease or contract whatsoever or otherwise and the person through whom another person is said to claim shall mean any person by through or under or by the act of whom the person so claiming became entitled to the estate or interest claimed as heir issue in tail tenant by the courtesy of England tenant in dower successor special or general occupant executor administrator legatee husband assignee appointee devisee or otherwise and also any person who was entitled to an estate or interest to which the person so claiming or some person through whom he claims became entitled as lord by escheat and the word "person" shall extend to a body politic corporate or collegiate and to a class of creditors or other persons as well as an individual and no part of Australia nor any island adjacent thereto (being part of the dominions of Her Majesty) shall be deemed to be beyond seas within the meaning of this Act.

Preamble.

Meaning of words in the Act.

3 & 4 Wm. IV. c. 27 s. 1. 2 Pring 1197.

"Land."

"Rent."

15 Vic. No. 11 s. 24. 1 Pring 494.

Person through whom another claims.

"Person."

Australia and the adjacent islands not to be deemed beyond seas.

Rights of Entry Distress or Action.

2. No descent cast discontinuance or warranty shall toll or defeat any right of entry or action for the recovery of land.

No descent cast warranty to bar a right of entry &c.

3 & 4 Wm. IV. c. 27 s. 39. 2 Pring 1205.

3. No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

No right to be preserved by continual claim.

3 & 4 Wm. IV. c. 27 s. 11. 2 Pring 1200.

4. The

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Receipt of rent to be deemed receipt of profits.

3 & 4 Wm. IV. c. 27 s. 35. 2 Pring 1201.

At the end of the period of limitation the right of the party out of possession to be extinguished.

3 & 4 Wm. IV. c. 27 s. 34. 2 Pring 1204.

No land or rent to be recovered but within twenty years after the right of action accrued to the claimant or some person whose estate he claims.

3 & 4 Wm. IV. c. 27 s. 2. 2 Pring 1198.

Persons under disability of infancy lunacy coverture or beyond seas and their representatives to be allowed ten years from the termination of their disability or death.

3 & 4 Wm. IV. c. 27 s. 16. 2 Pring 1200.

But no action &c. shall be brought &c. beyond forty years after the right of action accrued.

3 & 4 Wm. IV. c. 27 s. 17. 2 Pring 1200.

No further time to be allowed for a succession of disabilities.

3 & 4 Wm. IV. c. 27 s. 18. 2 Pring 1201.

3 & 4 Wm. IV. c. 27 s. 19. 2 Pring 1201.

4. The receipt of the rent payable by any tenant from year to year or other lessee shall as against such lessee or any person claiming under him (but subject to the lease) be deemed to be the receipt of the profits of the land for the purposes of this Act.

5. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any writ or action or suit the right and title of such person to the land or rent for the recovery whereof such entry distress action or suit respectively might have been made or brought within such period shall be extinguished.

Limitation of Actions and Distresses.

6. No person shall make an entry or distress or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims or if such right shall not have accrued to any person through whom he claims then within twenty years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same.

7. Provided always that if at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy coverture idiotcy lunacy unsoundness of mind or absence beyond seas then such person or the person claiming through him may notwithstanding the period of twenty years hereinbefore limited shall have expired make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability or shall have died (which shall have first happened).

8. Provided nevertheless that no entry distress or action shall be made or brought by any person who at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued shall be under any of the disabilities hereinbefore mentioned or by any person claiming through him but within forty years next after the time at which such right shall have first accrued although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years or although the term of ten years from the time at which he shall have ceased to be under any such disability or have died shall not have expired.

9. Provided always that when any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued and shall depart this life without having ceased to be under any such disability no time to make an entry or distress or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued or the said period of ten years next after the time at which such person shall have died shall be allowed by reason of any disability of any other person.

10. Provided

10. Provided always that it shall be lawful for any corporation sole to make an entry or distress or to bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole or of his predecessor to make such entry or distress or bring such action or suit shall first have accrued that is to say the period during which two persons in succession shall have held the office in respect whereof such land or rent shall be claimed and six years after a third person shall have been appointed thereto if the times of such two incumbencies and such term of six years taken together shall amount to the full period of sixty years and if such times taken together shall not amount to the full period of sixty years then during such further number of years in addition to such six years as will with the time of the holding of such two persons and such six years make up the full period of sixty years and no such entry distress action or suit shall be made or brought at any time beyond the determination of such period.

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No lands or rents to be recovered by ecclesiastical eleemosynary corporations sole but within two incumbencies and six years or sixty years.
3 & 4 Wm. IV. c. 27 s. 29. 2 Pring 1203.
27 Vic. No. 8 s. 7.
3 Pring 271.
28 Vic. No. 24 ss. 4 and 12.
3 Pring 302 and 303.

Accrual of Right.

11. In the construction of this Act the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned that is to say when the person claiming such land or rent or some person through whom he claims shall in respect of the estate or interest claimed have been in possession or in receipt of the profits of such land or in receipt of such rent and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits or rent were or was so received and when the person claiming such land or rents shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt then such right shall be deemed to have first accrued at the time of such death and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted appointed or otherwise assured by any instrument (other than a will) to him or some person through whom he claims by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land or in the receipt of the rent and no person entitled under such instrument shall have been in such possession or receipt then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument and when the estate or interest claimed shall have been an estate or interest in reversion or remainder or other future estate or interest and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest then such right shall be deemed to have first accrued at the time at which such estate or interest

When the right shall be deemed to have accrued.
3 & 4 Wm. IV. c. 27 s. 3. 2 Pring 1198.

In the case of an estate in possession.
On dispossession.

On abatement or death.

On alienation.

In case of future estates.

31 VICTORIA No. 16. interest became an estate or interest in possession and when the person claiming such land or rent or the person through whom he claims shall have become entitled by reason of any forfeiture or breach of condition then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

Where advantage of forfeiture is not taken by remainderman he shall have a new right when his estate comes into possession.
3 & 4 Wm. IV. c. 27 s. 4. 2 Pring 1199.

12. Provided always that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder and the land or rent shall not have been recovered by virtue of such right the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession as if no such forfeiture or breach of condition had happened.

Reversioner to have a new right.
3 & 4 Wm. IV. c. 27 s. 5. 2 Pring 1199.

13. Provided also that a right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued in respect of an estate or interest in reversion at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held or the profits thereof or such rent shall have been received notwithstanding the person claiming such land or some person through whom he claims shall at any time previously to the creation of the estate or estates which shall have determined have been in possession or receipt of the profits of such land or in receipt of such rent.

An administrator to claim as if he obtained the estate without interval after death of deceased.
3 & 4 Wm. IV. c. 27 s. 6. 2 Pring 1199.

14. For the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

In the case of a tenant at will the right shall be deemed to have accrued at the end of one year.
3 & 4 Wm. IV. c. 27 s. 7. 2 Pring 1199.

15. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant at will the right of the person entitled subject thereto or of the person through whom he claims to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy at which time such tenancy shall be deemed to have determined. Provided always that no mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of this clause to his mortgagee or trustee.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent.
3 & 4 Wm. IV. c. 27 s. 8. 1 Pring 1199.

16. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant from year to year or other period without any lease in writing the right of the person entitled subject thereto or of the person through whom he claims to make an entry or distress or to bring an action to recover such land or rent shall be deemed to have first accrued at the determination of the first of such years or other periods or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

17. When

17. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent by virtue of a lease in writing by which a rent amounting to the yearly sum of twenty shillings or upwards shall be reserved and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto the right of the person entitled to such land or rent subject to such lease or of the person through whom he claims to make an entry or distress or to bring an action after the determination of such lease shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

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Where rent amounting to twenty shillings reserved by a lease in writing shall have been wrongfully received right to accrue on first wrongful receipt and no right to accrue on the determination of the lease.

3 & 4 Wm. IV. c. 27 s. 9. 2 Pring 1199.

Possession.

18. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

A mere entry not to be deemed possession. 3 & 4 Wm. IV. c. 27 s. 10. 2 Pring 1200.

19. When any one or more of several persons entitled to any land or rent as coparceners joint tenants or tenants in common shall have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefit or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

Possession of one coparcener &c. not to be the possession of the others. 3 & 4 Wm. IV. c. 27 s. 12. 2 Pring 1200.

20. When a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land or to the receipt of any rent shall enter into the possession or receipt thereof such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

Possession of a younger brother not to be the possession of the heir. 3 & 4 Wm. IV. c. 27 s. 13. 2 Pring 1200.

21. Provided always that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land or in receipt of such rent then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed according to the meaning of this Act to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same and the right of such last-mentioned person or any person claiming through him to make any entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at and not before the time at which such acknowledgment or the last of such acknowledgments if more than one was given.

Acknowledgment in writing given to the person entitled or his agent to be equivalent to possession or receipt of rent. 3 & 4 Wm. IV. c. 27 s. 14. 2 Pring 1200.

Future Estates.

22. When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been

When the right to an estate in possession is barred the right of

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 ———
 the same person to
 future estates shall
 also be barred.
 3 & 4 Wm. IV.
 c. 27 s. 20. 2 Pring
 1201.

been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited which shall be applicable in such case and such person shall at any time during the said period have been entitled to any other estate interest right or possibility in reversion remainder or otherwise in or to the same land or rent no entry distress or action shall be made or brought by such person or any person claiming through him to recover such land or rent in respect of such other estate interest right or possibility unless in the meantime such land or rent shall have been recovered by some person entitled to an estate interest or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

Estates Tail.

Where tenant in tail
 is barred remainder-
 men whom he might
 have barred shall not
 recover.
 3 & 4 Wm. IV. c.
 27 s. 21. 2 Pring
 1201.

23. When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited which shall be applicable in such case no such entry distress or action shall be made or brought by any person claiming any estate interest or right which such tenant in tail might lawfully have barred.

Possession adverse to
 a tenant in tail shall
 run on against the
 remaindermen whom
 he might have barred.
 3 & 4 Wm. IV. c.
 27 s. 22. 2 Pring
 1201.

24. When a tenant in tail of any land or rent entitled to recover the same shall have died before the expiration of the period hereinbefore limited which shall be applicable in such case for making an entry or distress or bringing an action to recover such land or rent no person claiming any estate interest or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which if such tenant in tail had so long continued to live he might have made such entry or distress or brought such action.

Where there shall
 have been possession
 under an assurance
 by a tenant in tail
 which shall not bar
 the remainders they
 shall be barred at the
 end of twenty years
 after the time when
 the assurance if then
 executed would have
 barred them.
 3 & 4 Wm. IV. c.
 27 s. 23. 2 Pring
 1201.

25. When a tenant in tail of any land or rent shall have made an assurance thereof which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail and any person shall by virtue of such assurance at the time of the execution thereof or at any time afterwards be in possession or receipt of the profits of such land or in the receipt of such rent and the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue to be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed would without the consent of any other person have operated to bar such estate or estates as aforesaid then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate interest or right to take effect after or in defeasance of such estate tail.

Limitation of Suits.

No suit in equity to
 be brought after the
 time when the plain-
 tiff if entitled at law

26. No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made

an

an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate interest or right in or to the same as he shall claim therein in equity.

27. Provided always that when any land or rent shall be vested in a trustee upon any express trust the right of the cestuique trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover such land or rent shall be deemed to have first accrued according to the meaning of this Act at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

28. In every case of a concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered. Provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents or for setting aside any conveyance of such lands or rents on account of fraud against any *bond fide* purchaser for valuable consideration who has not assisted in the commission of such fraud and who at the time that he made the purchase did not know and had no reason to believe that any such fraud had been committed.

29. Provided always that nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

Mortgages.

30. When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor or some person claiming his estate or to the agent of such mortgagor or person in writing signed by the mortgagee or the person claiming through him and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment or the last of such acknowledgments if more than one was given and when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors such acknowledgment if given to any of such mortgagors or persons or his or their agent shall be as effectual as if the same had been given to all such mortgagors or persons but where there shall be more than one mortgagee or more than one person claiming the estate or interest of the mortgagee or mortgagees such acknowledgment signed by one or more of such mortgagees or persons shall be effectual only as against

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might have brought an action.

3 & 4 Wm. IV. c. 27 s. 24. 2 Pring 1202.

In cases of express trust the right shall not be deemed to have accrued until a conveyance to a purchaser.

3 & 4 Wm. IV. c. 27 s. 25. 2 Pring 1202.

In cases of fraud no time shall run whilst the fraud remains concealed.

3 & 4 Wm. IV. c. 27 s. 26. 2 Pring 1202.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise.

3 & 4 Wm. IV. c. 27 s. 27. 2 Pring 1202.

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession or from the last written acknowledgment.

3 & 4 Wm. IV. c. 27 s. 28. 2 Pring 1202.

31 VICTORIA No. 16. against the party or parties signing as aforesaid and the person or persons claiming any part of the mortgage money or land or rent by from or under him or them and any person or persons entitled to any estate or estates interest or interests to take effect after or in defeasance of his or their estate or estates interest or interests and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgaged money the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment with interest of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

Mortgagees within the definition in section 1 may bring actions to recover land within twenty years after last payment of principal or interest.

1 Vic. c. 23. 2 Pring 1206.

31. It shall and may be lawful for any person entitled to or claiming under any mortgage of land being land within the definition contained in the first section of this Act to make an entry or bring an action at law or suit in equity to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued anything herein notwithstanding.

Extension of Right of Distress and Action.

Rent in arrear upon a lease for life &c. expired may be distrained for after the determination of the lease.

8 Anne c. 14 s. 6.

32. It shall and may be lawful for any person or persons having any rent in arrear or due upon any lease for life or lives or for years or at will ended or determined to distrain for such arrears after the determination of the said respective leases in the same manner as they might have done if such lease or leases had not been ended or determined.

Distress to be within six months after the end of the lease and during the landlords' title and tenants' possession.

8 Anne c. 14 s. 7.

Executors of lessors may distrain.

25 Vic. No. 13 s. 55.

2 Pring 1605.
3 & 4 Wm. IV. c. 42 ss. 37 and 38.

33. Provided that such distress be made within the space of six calendar months after the determination of such lease and during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

34. It shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the lands demised for any term or at will for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done in his lifetime and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined. Provided that such distress be made within six calendar months after the determination of such term or lease and during the continuance of the possession of the tenant from whom such arrears became due and that all provisions in force by law relating to distresses for rent shall be applicable to every distress so made.

The husband's remedy for rent due

35. If any man which now hath or hereafter shall have in the right of his wife any estate in fee simple fee tail or for term of life of

of or in any rents or fee farms and the same rents or fee farms now be or hereafter shall be due behind and unpaid in the said wife's life then the said husband after the death of his said wife his executors and administrators shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same his executors or administrators and also the said husband after the death of his said wife may distrain for the said arrearages in like manner and form as he might have done if his said wife had been then living and make avowry upon his matter as is aforesaid.

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in the right and in
the life of his wife.
32 Hy. VIII. c. 37 s. 3.

36. If any person which now have or hereafter shall have any rents or fee farms for term of life or lives of any other person and the said rent or fee farm now be or hereafter shall be due and unpaid in the life of such person for whose life the estate of the said rent or fee farm did depend or continue and the said person do die then he unto whom the said rent or fee farm was due in form aforesaid his executors or administrators shall and may have an action of debt against the tenant in demesne that ought to have paid the same when it was first due his executors and administrators and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee farms were issuing and payable in such like manner and form as he ought or might have done if such person by whose death the aforesaid estate in the said rents and fee farms was determined and expired had been in full life and was not dead and the avowry for the taking of the same distress to be made in manner and form aforesaid.

The remedy for a rent
the estate whereof
dependeth upon
another's life being
dead.
32 Hy. VIII. c. 37 s. 1.

37. Every person bodies politic and corporate shall and may have the like remedy by distress and by impounding and selling the same in cases of rents seek rents of assize and chief rents which have been or shall be hereafter created as in the case of rent reserved upon lease any law or usage to the contrary notwithstanding.

Method of recovering
seek rents &c.
4 Geo. II. c. 28 s. 5.

38. In case any tenant shall give notice of his intention to quit the premises by him holden at a time mentioned in such notice and shall not accordingly deliver up the possession thereof at the time in such notice contained then the said tenant his executors or administrators shall from thenceforward pay to the landlord or lessor double the rent or sum which he should otherwise have paid to be levied sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied sued for or recovered and such double rent or sum shall continue to be paid during all the time such tenant shall continue in possession as aforesaid.

Tenants holding over
after their notice for
quitting to pay
double rent.
11 Geo. II. c. 19 s. 18.

Apportionment.

39. From and after the commencement of this Act all rents service reserved on any lease by a tenant in fee or for any life interest or by any lease granted under any power (and which leases shall have been granted after the commencement of this Act) and all rents charge and other rents annuities pensions dividends and all other payments of every description made payable or coming due at fixed periods under any instrument that shall be executed after the commencement of this Act or (being a will or testamentary instrument) that shall come into operation after the commencement of this Act shall be apportioned

All rents annuities
and other payments
coming due at fixed
periods to be appor-
tioned.
4 & 5 Wm. IV. c. 22
s. 2.

31 VICTORIA No. 16. apportioned so and in such manner that on the death of any person interested in any such rents annuities pensions dividends or other payments as aforesaid or in the estate fund or office from or in respect of which the same shall be issuing or derived or on the determination by any other means whatsoever of the interest of any such person he or she and his or her executors administrators or assigns shall be entitled to a proportion of such rents annuities pensions dividends and other payments according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be) including the day of the death of such person or of the determination of his or her interest all just allowances and deductions in respect of charges on such rents annuities pensions dividends and other payments being made and every such person his or her executors administrators and assigns shall have such and the same remedies at law and in equity for recovering such apportioned parts of the said rents annuities pensions dividends and other payments when the entire portion of which such apportioned parts shall form part shall become due and payable and not before as he she or they would have had for recovering and obtaining such entire rents annuities pensions dividends and other payments if entitled thereto but so that persons liable to pay rents reserved by any lease or demise and the lands tenements and hereditaments comprised therein shall not be resorted to for such apportioned parts specifically as aforesaid but the entire rents of which such portions shall form a part shall be received and recovered by the person or persons who if this Act had not passed would have been entitled to such entire rents and such portions shall be recoverable from such person or persons by the parties entitled to the same under this Act in any action or suit at law or in equity Provided always that the provisions in this section contained shall not apply to any case in which it shall be expressly stipulated that no apportionment shall take place or to annual sums made payable in policies of assurance of any description.

Subject to all just deductions.

Remedies for obtaining the apportioned parts.

Not to apply in certain cases.

Rent Charges.

Release of part of land charged not to be an extinguishment. 22 & 23 Vic. c. 35 s. 10.

40. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent charge but shall operate only to bar the right to recover any part of the rent charge out of the hereditaments released without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release.

Privileged Persons and Goods.

Processes against any public minister or his servants to be adjudged void. 7 Anne c. 12 s. 3.

41. All writs and processes that shall at any time hereafter be sued forth or prosecuted whereby the person of any ambassador or other public minister of any foreign prince or state authorised and received as such by Her Majesty Her Heirs or Successors or the domestic or domestic servant of any such ambassador or other public minister may be arrested or imprisoned or his or their goods or chattels may be distrained seized or attached shall be deemed and adjudged to be utterly null and void to all intents constructions and purposes whatsoever.

Visitors' and lodgers' goods not to be seized for rent.

42. No distress shall be made on the goods of any casual visitor in any house nor on the goods (other than furniture) of any lodger

lodger in any house or apartment ordinarily let or used as a lodging-house or apartment.

Year's Rent.

43. No goods or chattels whatsoever lying or being in or upon any messuage lands or tenements which are or shall be leased for life or lives term of years at will or otherwise shall be liable to be taken by virtue of an execution on any pretence whatsoever unless the party at whose suit the said execution is sued out shall before the removal of such goods from off the said premises by virtue of such execution or extent pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking of such goods or chattels by virtue of such execution. Provided the said arrears of rent do not amount to more than one year's rent and in case the said arrears shall exceed one year's rent then the said party at whose suit such execution is sued out paying the said landlord or his bailiff one year's rent may proceed to execute his judgment as he might have done before the making of this Act and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money but this section shall not affect section ninety-nine of the *District Courts Act of 1867*.

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15 Vic. No. 11 s. 6.
1 Pring 491.

No goods shall be taken in execution &c. unless the party before removal of the goods &c. pay the landlord the rent due. 8 Anno c. 14 s. 1.

Provided that it amount to no more than one year's rent.

The sheriff &c. to levy the rent as well as the execution money.

44. In case all or any part of the growing crops of the tenant of any farm or lands shall be seized and sold by any sheriff or other officer by virtue of any writ of *fieri facias* or other writ of execution such crops so long as the same shall remain on the farms or lands shall in default of sufficient distresses of the goods and chattels of the tenant be liable to the rent which may accrue and become due to the landlord after any such seizure and sale and to the remedies by distress for recovery of such rent and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by any such sheriff or other officer.

Growing crops seized and sold under execution to be liable for accruing rent. 14 & 15 Vic. c. 25 s. 2.

Warrant of Distress Copies and Inventory.

45. No person to whom any rent shall be due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted such warrant to be in the form or to the effect of the schedule hereunto annexed number one. Provided always that whenever the person signing such warrant shall be unable to write his name his signature shall be attested by a justice of the peace an attorney at law or a clerk of petty sessions.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11 s. 1.
1 Pring 490.

46. Every person making any such distress as the agent or bailiff of another shall first procure from such person two copies of the before-mentioned warrant both of which shall be signed as aforesaid and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained or to some person for him resident at the place where the said distress shall be made and in case there shall be no person at such place with whom such copy can be left as aforesaid then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. 15 Vic. No. 11 s. 2.
1 Pring 491.

47. Every

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Person distraining to
forthwith make out
and deliver inventory.
15 Vic. No. 11 s. 3.
1 Pring 491.

47. Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of the schedule hereunto number two of the goods distrained which inventory shall be dated on the day of such distress and shall be signed by the person making the same and shall be thereupon delivered to the tenant or owner of the goods so distrained or to some person for him resident at the place where the said distress shall be made and in case there shall be no person at such place with whom such inventory can be left as aforesaid then such inventory shall be posted on some conspicuous part of the premises on which the distress is made and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Charges of Distress.

Charges of distress
defined.
15 Vic. No. 11 s. 17.
1 Pring 493.

48. Where any distress shall be made by the person to whom the rent shall be due or by any bailiff or agent as aforesaid the charges in the section next following mentioned and no other shall be made in respect thereof.

Costs of levy.

49. The costs of levy where made by an agent or bailiff under the authority of a warrant to distrain shall be according to the following scale—

15 Vic. No. 11 schedule
C. 1 Pring 495.
57 Geo. III. c. 93 s. 1.

	£	s.	d.
Where the sum distrained for shall be more than two and less than ten pounds	0	5	0
Where such sum shall be ten and less than fifty pounds	0	10	0
Where such sum shall be fifty pounds or upwards	1	0	0
Man in possession per diem	0	4	0
And the charges of the auctioneer or the bailiff conducting the sale shall not exceed two and a half per cent.			
And the charge for advertisements shall be the money paid for their insertion if such advertisements be required by the person whose goods are distrained.			

Distrainable Goods.

Corn loose &c. may
be detained and sold.
2 Wm. & Mary
Sess. 1 c. 5 s. 3.

50. It shall and may be lawful to and for any person or persons having rent arrear and due upon any such demise lease or contract as aforesaid to seize and secure any sheaves or cocks of corn or corn loose or in the straw or hay lying or being in any barn or granary or upon any hovel stack or rick or otherwise upon any part of the land or ground charged with such rent and to lock up or detain the same in the place where the same shall be found for or in the nature of a distress until the same shall be replevied upon such security to be given as hereinafter provided and in default of replevying the same as aforesaid within the time hereinafter provided to sell the same so as nevertheless such corn grain or hay so distrained as aforesaid be not removed by the person or persons distraining to the damage of the owner thereof out of the place where the same shall be found and seized but be kept there (as impounded) until the same shall be replevied or sold in default of replevying the same within the time hereinafter provided.

Landlord may
distrain stock or
cattle on the
premises.

51. It shall and may be lawful for every lessor or landlord or his steward bailiff receiver or other person empowered by him to take and seize as a distress for arrears of rent any cattle or stock of their respective

respective tenant feeding or depasturing upon any common appurtenant or any ways belonging to all or any part of the premises demised or holden and also to take and seize all sorts of corn and grass hops roots fruits pulse or other product whatsoever which shall be growing on any part of the estates so demised or holden as a distress for arrears of rent and the same to cut gather make cure carry and lay up when ripe in the barns or other proper place on the premises so demised or holden and in case there shall be no barn or proper place on the premises so demised or holden then in any other barn or proper place which such lessor or landlord shall hire or otherwise procure for that purpose and as near as may be to the premises and in convenient time to sell or otherwise dispose of the same towards satisfaction of the rent for which such distress shall have been taken and of the charges of such distress and sale in the same manner as other goods and chattels may be seized distrained and disposed of.

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11 Geo. II. c. 19 s. 8.

52. Every person who shall impound or confine or cause to be impounded or confined any horse ass or other cattle or animal in any common pound open pound or close pound or in any inclosed place shall and he is hereby required to find provide and supply such horse ass and other cattle or animal so impounded or confined daily with good and sufficient food and nourishment for so long a time as such horse ass or other cattle or animal shall remain and continue so impounded or confined as aforesaid and every such person who shall so find provide and supply any such horse ass or other cattle or animal with such daily food and nourishment as aforesaid shall and may and he and they are hereby authorised and empowered to recover of and from the owner or owners of such cattle or animal not exceeding double the full value of the food and nourishment so supplied to such cattle or animal as aforesaid by proceeding before a justice of the peace within whose jurisdiction such cattle or animal shall have been so impounded and supplied with food as aforesaid in like manner as any forfeiture or any damage or injury may be recovered under and by virtue of any of the powers or authorities in any Act in that behalf contained and which value of the food and nourishment so to be supplied as aforesaid such justice is hereby fully authorised and empowered to ascertain determine and enforce as aforesaid And every person who shall have so supplied such food and nourishment as aforesaid shall be at liberty if he shall so think fit instead of proceeding for the recovery of the value thereof as last aforesaid after the expiration of seven clear days from the time of impounding the same to sell any such horse ass or other cattle or animal openly at any public market (after having given three days' public printed notice thereof) for the most money that can then be got for the same and to apply the produce in discharge of the value of such food and nourishment so supplied as aforesaid and the expenses of and attending such sale rendering the overplus (if any) to the owner of such cattle or animal.

Parties impounding cattle to provide food.

5 & 6 Wm. IV. c. 59 s. 4.

53. In case any horse ass or other animal shall at any time so remain impounded or confined as aforesaid without sufficient daily food or nourishment more than twenty-four hours it shall and may be lawful to and for any person or persons whomsoever from time to time and as often as shall be necessary to enter into and upon any such common

Person may enter pounds &c.

5 & 6 Wm. IV. c. 59 s. 5.

31 VICTORIA No. 16. common pound open pound or close pound or other inclosed place in which any such cattle or animal shall be so impounded or confined and to supply such cattle or animal with such good and sufficient food and nourishment during so long a time as such cattle or animal shall so remain and continue impounded or confined as aforesaid without being liable to any action of trespass or other proceeding by any person or persons whomsoever for or by any reason of such entry or entries for the purposes aforesaid.

Tenant to have notice of the place where the distress is lodged.
11 Geo. II. c. 19 s. 9.

Distress of corn &c. to cease if rent be paid before it be cut.

54. Notice of the place where the goods and chattels so distrained shall be lodged or deposited shall within the space of one week after the lodging or depositing thereof in such place be given to such lessee or tenant or left at the last place of his abode and if after any distress for arrears of rent so taken of corn grass hops roots fruits pulse or other product which shall be growing as aforesaid and at any time before the same shall be ripe and cut cured or gathered the tenant or lessee his executors administrators or assigns shall pay or cause to be paid to the lessor or landlord for whom such distress shall be taken or to the steward or other person usually employed to receive the rent of such lessor or landlord the whole rent which shall be then in arrear together with the full costs and charges of making such distress and which shall have been occasioned thereby then and upon such payment or lawful tender thereof actually made whereby the end of such distress will be fully answered the same and every part thereof shall cease and the corn grass hops roots fruits pulse or other product so distrained shall be delivered up to the lessee or tenant his executors administrators or assigns.

If any lessee &c. shall fraudulently carry off goods and the lessor &c. may within thirty days after seize such goods &c. and sell the same as if they had been distrained.

8 Anne c. 14 s. 2.
11 Geo. II. c. 19 s. 1.

55. In case any tenant or lessee for life or lives term of years at will sufferance or otherwise of any messuages lands tenements or hereditaments upon the demise or holding whereof any rents are or shall be reserved due or made payable shall fraudulently or clandestinely convey or carry off or from such premises his goods or chattels with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved due or made payable as aforesaid it shall and may be lawful to and for such lessor or landlord or any persons by him for that purpose lawfully empowered within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of rent and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such premises for such arrears of rent any law custom or usage to the contrary in anywise notwithstanding.

Proviso that such lessor &c. shall not seize any goods &c. which shall be *bona fide* sold before.
8 Anne c. 14 s. 3.
11 Geo. II. c. 19 s. 2.

56. Provided that no lessor or landlord shall take or seize any such goods or chattels as a distress for the same which shall be sold *bona fide* and for a valuable consideration before such seizure made to any person not privy to such fraud as aforesaid anything herein contained to the contrary notwithstanding.

Landlord may break open houses.
11 Geo. II. c. 19 s. 7.

57. When any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant lessee or his servant agent or other person aiding or assisting therein shall be put placed or kept

in any house barn stable outhouse yard close or place locked up fastened or otherwise secured so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent it shall and may be lawful for the landlord lessor his steward bailiff receiver or other person empowered to take and seize as a distress for rent such goods and chattels (first calling to his assistance a peace officer of the district or place where the same shall be suspected to be concealed who is hereby required to aid and assist therein and in case of a dwelling-house oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the daytime to break open and enter into such house barn stable outhouse yard close and place and to take and seize such goods and chattels for the said arrears of rent as he might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

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Sale.

58. Where any goods or chattels shall be distrained for any rent and the tenant or owner of the goods so distrained shall not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law then in such case after the expiration of the said five days the person distraining shall and may cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer or by a sheriff's bailiff or a bailiff of some court of petty sessions or small debts court for the best price that can be gotten for the same towards satisfaction of the said rent and the charges of the said distress and sale and the overplus if any shall be forthwith handed over to the said tenant or owner and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand. Provided always that nothing herein contained as to the time of sale shall apply to any corn grass hops roots fruits pulse or other product whatsoever which shall be growing at the time of the same being seized as a distress.

Goods distrained for rent may be sold after the expiration of five days.

15 Vic. No. 11 s. 4.
1 Pring 491.
2 Wm. & Mary Sess. 1 c. 5 s. 2.

Not to apply to corn grass hops &c. growing at time of seizure.

59. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Owner of distrained goods may direct order of sale.

15 Vic. No. 11 s. 5.
1 Pring 491.

60. It shall be lawful for any person lawfully taking any distress for rent to impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress and to sell and dispose of the same upon the premises and it shall be lawful for any person or persons whatsoever after the expiration of the five days hereinbefore mentioned to come and go to and from such place or part of the said premises where any distress for rent shall be impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof and if any pound breach or rescous shall be made

Distress may be secured and sold on premises.

15 Vic. No. 11 s. 1S.
1 Pring 493.
11 Geo. II. c. 19 s. 10.

31 VICTORIE No. 16. of any goods and chattels distrained for rent the person or persons aggrieved thereby shall in a special action on the case for the wrong thereby sustained recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound breach any or either of them or against the owner of the goods distrained in case the same be afterwards found to have come to his use or possession.

Treble damages for pound breach.
2 Wm. & Mary
Sess. 1 c. 5 s. 4.

No appraisement necessary in distress for rent.
15 Vic. No. 11 s. 20.
1 Pring 493.

61. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof.

Unlawful Distress.

Double damages and costs against unlawful distrainer.
15 Vic. No. 11 s. 19.
1 Pring 493.

62. In case any such distress and sale as aforesaid shall be made by virtue or color of this Act for rent pretended to be arrear and due where in truth no rent is arrear or due to the person distraining or to him in whose name or right such distress shall be taken as aforesaid then the owner of such goods or chattels distrained and sold as aforesaid his executors or administrators shall and may by action of trespass or upon the case to be brought against the person so distraining his executors or administrators recover double of the value of the goods or chattels so distrained and sold together with full costs of suit.

Penalty for distraining &c. contrary to law.
15 Vic. No. 11 s. 22.
1 Pring 494.

63. If any person shall knowingly and wilfully distrain for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate or shall neglect or refuse to deliver one of such duplicates to the tenant or owner as hereinbefore directed or if any person distraining for rent shall neglect or refuse to make out and deliver or post up such inventory as aforesaid or shall charge more for any distress or sale than is authorised by this Act or shall refuse to give such account in writing of any sale as hereinbefore provided every person so offending shall on conviction be liable to a penalty not exceeding fifty pounds to be recovered in a summary way by the party aggrieved before any two justices of the peace.

Distresses for rent not unlawful &c. for any irregularity therein.
11 Geo. II. c. 19 s. 19.

64. When any distress shall be made for any kind of rent justly due and any irregularity or unlawful act shall be afterwards done by the party distraining or by his her or their agents the distress itself shall not be therefore deemed to be unlawful nor the party making it be deemed a trespasser *ab initio* but the party aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he or they may have sustained thereby and no more in an action of trespass or on the case at the election of the plaintiff provided always that when the plaintiff shall recover in such action he shall be paid his full costs of suit and have all the like remedies for the same as in other cases of costs.

The Prerogative.

This Act shall not hinder the Queen &c. to levy any debts fines &c. due to the Crown.
8 Anne c. 14 s. 8.

65. Nothing in this Act contained shall extend or be construed to extend to let hinder or prejudice Her Majesty Her Heirs or Successors in the levying recovering or seizing any debts fines penalties or forfeitures that are or shall be due payable or answerable to Her Majesty Her Heirs or Successors but that it shall and

and may be lawful for Her Majesty Her Heirs and Successors to levy 31 VICTORIA No. 16.
recover and seize such debts fines penalties and forfeitures in the same
manner as if this Act had never been made anything in this Act
contained to the contrary thereof in anywise notwithstanding.

66. From and after the commencement of this Act all the rules regulations clauses provisions penalties matters and things in this Act contained shall extend and be construed to extend and shall be applied and put in execution so far as the same are applicable and capable of being put in execution with respect to any distress or levy which shall be made for any land tax or any other rates taxes impositions or assessments whatever in all cases where the sum demanded and due for or in respect of such rates taxes assessments or impositions shall not exceed the sum of twenty pounds and in all cases where the whole of the several sums sought to be levied by distresses taken for different purposes at the same time shall not exceed the sum of twenty pounds and such costs and charges and no other shall be taken and payable as the costs and charges of the levy and disposition of such distresses and all such proceedings shall and may be had and taken against any and every person transgressing the regulations of this Act in the levying or distraining for any such taxes rates impositions or assessments and all such persons shall be liable to and shall incur such and the like penalties as by this Act are directed required and imposed with respect to persons making any distress for rent contrary to the directions of this Act and in any order or judgment of any justices before whom any complaint shall be preferred in consequence of this Act such order shall be expressed to be made upon a complaint for the breach of this Act.

Provisions of last
section extended to
other distresses.
7 & 8 Geo. IV. c. 17
s. 1.

Replevin.

67. The sheriff or his deputy by him specially appointed for that purpose shall have power to grant replevin in all cases in which a sheriff in England has power to grant the same and every person who shall apply to make replevin shall enter a plaint in replevin in the form hereinafter given or to be fixed by rules of court as hereinafter provided in the office of the said sheriff and upon such security being given by bond as hereinafter mentioned a precept in replevin in the form hereinafter given or to be fixed in like manner shall issue to cause the goods seized to be re-delivered to the person replevying the same and such sheriff and deputy shall have power to take and shall require before he grants any such replevin from the person desiring to make replevin a bond with one or more responsible surety or sureties in a competent amount the condition of which bond shall be that the party desiring to make such replevin shall prosecute his suit in a proper court with effect and without delay and make return of the goods and chattels seized if a return thereof be adjudged and such bond may be assigned by such sheriff and sued on in like manner as in like cases in England.

Power to take
replevin.
25 Vic. No. 13 s. 45.
2 Pring 1603.

68. The sheriff for the time being of the said colony shall by writing under his hand and seal appoint one or more deputy or deputies in Brisbane for the purpose of making replevin and deliverance of distresses.

Sheriff to appoint
deputies at certain
places.
15 Vic. No. 11 s. 7.
1 Pring 491.

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Justices may grant
replevin in certain
cases.
15 Vic. No. 11 s. 8.
1 Pring 491.

69. In all cases in which any distress shall be made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid it shall be lawful for any justice of the peace to grant a replevin of the goods distrained and for that purpose to take a replevin bond with sufficient sureties. Provided nevertheless that neither such justice nor the sheriff nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he shall have acted *bonâ fide* and with reasonable care and caution.

Sheriff before
deliverance of any
distress to take suffi-
cient security as here-
in mentioned.
15 Vic. No. 11 s. 9.
1 Pring 491.

70. The said sheriff or deputy or justice of the peace as aforesaid shall before deliverance be made by him of any distresses take from the person or persons to whom such replevin is granted and two sufficient sureties a bond in double the value of the property distrained such value to be ascertained by the oath of one or more credible witness or witnesses and which oath the person granting replevin is hereby authorised to administer conditioned for commencing within one calendar month from the date of such bond and prosecuting with effect and without delay an action for the taking and detaining the property distrained and for returning such property in case a return should be awarded and such sheriff deputy or justice of the peace taking any such bond shall at the request of the avowant or person making cognizance assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness and if the bond so taken and assigned be forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name and the court where such action shall be brought may by a rule or order of the same court give such relief to the parties upon such bond as may be agreeable to justice and reason and such rule shall have the nature and effect of a defeasance to such bond.

Actions of replevin to
be commenced by
writ of summons in
such form as the
judges shall prescribe.
15 Vic. No. 11 s. 10.
1 Pring 492.

71. Every action of replevin except those over which jurisdiction is expressly given to district courts or small debts courts and courts of petty sessions shall be commenced in the Supreme Court of Queensland by writ of summons in such form as the judges shall from time to time prescribe as hereinafter mentioned and be thenceforward prosecuted and dealt with in like manner as other actions in the said court may be prosecuted and dealt with and the laws and statutes in force in England applicable to actions of replevin shall be in force in this colony and be applied in the administration of justice so far as the same can be applied within this colony.

Forms of precept to
replevy and of re-
plevin and assign-
ment bonds.
15 Vic. No. 11 s. 11.
1 Pring 492.

72. Every plaint in replevin may be in the form or to the effect of the schedule to this Act number three and every precept to replevy may be in the form or to the effect of the schedule to this Act annexed number four and every replevin bond shall be taken in the form or to the effect of the schedule to this Act annexed number five and every assignment of such bond shall be in the form or to the effect of the schedule to this Act annexed number six.

Fees to be charged.
15 Vic. No. 11 s. 12.
1 Pring 492.

73. The sheriff and every such deputy as aforesaid and every justice of the peace shall be entitled to demand and receive for the making of every replevin including the taking of the bond thereon a fee

fee of ten shillings and for the making of every such assignment a fee of two shillings and sixpence. 31 VICTORIA No. 16.

74. The respective district courts and small debts courts established or hereafter to be established and the respective courts of petty sessions established or hereafter to be established in any part of the colony shall and they are hereby authorised and empowered to hear and determine within their respective jurisdictions all actions of replevin relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress shall be or ought to have been made shall not in the case of a district court exceed fifty pounds or in the case of a small debts court or court of petty sessions exceed thirty pounds in amount or value and all proceedings in such actions of replevin shall be taken and all such actions shall be tried and determined in the same manner and shall be subject to the same rules and appeal as the law now directs or shall hereafter direct with respect to other actions in the said district courts or small debts courts or courts of petty sessions. District and small debts courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds. 15 Vic. No. 11 s. 13. 1 Pring 492.

75. The plaint in actions of replevin in the said district courts small debts courts or courts of petty sessions shall be in the form or to the effect of the schedule to this Act annexed number three. As to form of plaint in such actions. 15 Vic. No. 11 s. 14. 1 Pring 492.

76. If at the hearing of any such action of replevin before any of the said district courts or small debts courts or courts of petty sessions it shall appear that any sum was due for rent and that no tender the sum so due was made before the filing of the plaint in the said court it shall be lawful for such court to give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress and in case it shall appear that no rent was due at the time of such distress or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint it shall be lawful for such court to direct the replevin bond to be delivered up to the party complaining of the distress and also to give judgment for the plaintiff for such damages as the court may think fit and if necessary to direct that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due and to make an order accordingly. Court may award damages or may order replevin bond to be given up. 15 Vic. No. 11 s. 15. 1 Pring 492.

77. It shall be lawful for every such district court and small debts court or court of petty sessions on the hearing of any such action of replevin to order that the goods distrained shall be returned to the party who distrained the same and in every such case where the goods distrained shall be actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond and all such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof. Court may order goods distrained on to be sold. 15 Vic. No. 11 s. 16. 1 Pring 493.

The Writ of Ejectment its Form and Duration.

78. In proceeding by ejectment a writ shall be issued directed to the persons in possession by name and to all persons entitled to defend the possession of the property claimed which property shall be described in the writ with reasonable certainty. Ejectment to be brought by writ. 17 Vic. No. 21 s. 119. 2 Pring 1629. 15 & 16 Vic. c. 76 s. 168.

79. The

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Form and duration
of writ of ejectment.
17 Vic. No. 21 s. 120.
2 Pring 1629.
15 & 16 Vic. c. 76
s. 169.

79. The writ shall state the names of all the persons in whom the title is alleged to be and command the persons to whom it is directed to appear within sixteen days after service thereof in the Supreme Court to defend the possession of the property sued for or such part thereof as they may think fit and it shall contain a notice that in default of appearance they will be turned out of possession and the writ shall bear teste of the day on which it is issued and shall be in force for three months and shall be in the form contained in the schedule number seven or to the like effect and the name and abode of the attorney issuing the same or if no attorney the name and residence of the party shall be indorsed thereon in like manner as in the *Common Law Process Act of 1857* enacted with reference to the indorsement on a writ of summons in a personal action and the same proceedings may be had to ascertain whether the writ was issued by the authority of the attorney whose name was indorsed thereon and who and what the claimants are and their abode and as to staying the proceedings upon writs issued without authority as in the case of writs in personal actions.

Service of the Writ.

Service of writ of
ejectment.
17 Vic. No. 21 s. 121.
2 Pring 1630.
15 & 16 Vic. c. 76
s. 170.

80. The writ shall be served in the same manner as an ejectment has heretofore been served or in such manner as the court or a judge shall order and in case of vacant possession by posting a copy thereof upon the door of the dwelling-house or other conspicuous part of the property.

Appearance and Defence.

Appearance of persons
named in the writ.
17 Vic. No. 21 s. 122.
2 Pring 1630.
15 & 16 Vic. c. 76.
s. 171.

81. The persons named as defendants in such writ or either of them shall be allowed to appear within the time appointed.

Appearance of persons
not named.
17 Vic. No. 21 s. 123.
2 Pring 1630.
15 & 16 Vic. c. 76
s. 172.

82. Any other person not named in such writ shall by leave of the court or a judge be allowed to appear and defend on filing an affidavit showing that he is in possession of the land either by himself or his tenant.

Appearance and
defence by landlord.
17 Vic. No. 21 s. 124.
2 Pring 1630.
15 & 16 Vic. c. 76
s. 173.

83. Any person appearing to defend as landlord in respect of property whereof he is in possession only by his tenant shall state in his appearance that he appears as landlord and such person shall be at liberty to set up any defence which a landlord appearing in an action of ejectment has heretofore been allowed to set up and no other.

Notice to defend for
part only.
17 Vic. No. 21 s. 125.
2 Pring 1630.
15 & 16 Vic. c. 76
s. 174.

84. Any person appearing to such writ shall be at liberty to limit his defence to a part only of the property mentioned in the writ describing that part with reasonable certainty in a notice intituled in the court and cause and signed by the party appearing or his attorney such notice to be served within four days after appearance upon the attorney whose name is indorsed on the writ if any and if none then to be filed in the prothonotary's office and an appearance without such notice confining the defence to part shall be deemed an appearance to defend for the whole.

Confession.

Defendant may
confess the action.
17 Vic. No. 21 s. 155.
2 Pring 1634.
15 & 16 Vic. c. 76
s. 203.

85. A sole defendant or all the defendants in ejectment shall be at liberty to confess the action as to the whole or part of the property by giving to such claimant a notice headed in the court and cause and signed by the defendant or defendants such signature to be attested

attested by his or their attorney and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession and costs in the form contained in the said schedule number eight or to the like effect.

86. In case one of several defendants in ejectment who defends separately for a portion of the property for which the other defendants do not defend shall be desirous of confessing the claimant's title to such portion he may give a like notice to the claimant and thereupon the claimant shall be entitled to and may forthwith sign judgment and issue execution for the recovery of possession of such portion of the property and for the costs occasioned by the defence relating to the same and the action may proceed as to the residue.

87. In case one of several defendants in ejectment who defends separately in respect of property for which other defendants also defend shall be desirous of confessing the claimant's title he may give a like notice thereof and thereupon the claimant shall be entitled to and may sign judgment against such defendant for the costs occasioned by his defence and may proceed in the action against the other defendants to judgment and execution.

Objections to Proceedings.

88. Want of "reasonable certainty" in the description of the property or part of it in the writ or notice shall not nullify them but shall only be ground for an application to a judge for better particulars of the land claimed or defended which a judge shall have power to give in all cases.

Judgments by Default.

89. In case no appearance shall be entered within the time appointed or if an appearance be entered but the defence be limited to part only the plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the writ shall recover possession of the land or of the part thereof to which the defence does not apply which judgment if for all may be in the form contained in the said schedule number nine or to the like effect and if for part may be in the form contained in the said schedule number ten or to the like effect.

Issue and Special Case.

90. In case an appearance shall be entered an issue may at once be made up without any pleadings by the claimants or their attorney setting forth the writ and stating the fact of the appearance with its date and the notice limiting the defence if any of each of the persons appearing so that it may appear for what the defence is made and directing the sheriff to summon a jury and such issue in case defence is made for the whole may be in the form contained in the said schedule number eleven or to the like effect and in case defence is made for part may be in the form contained in the said schedule number ten or to the like effect.

91. By consent of the parties and by leave of a judge a special case may be stated according to the practice heretofore used.

The Venue.

92. The court or a judge may on the application of either party order that the trial shall take place in any district other than that

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Confession by one of several defendants defending separately for part.

17 Vic. No. 21 s. 156.

2 Pring 1634.

15 & 16 Vic. c. 67 s. 220.

Confession by one of several defendants who defend for same property.

17 Vic. No. 21 s. 157.

2 Pring 1634.

15 & 16 Vic. c. 76 s. 205.

Want of certainty cured by particulars.

17 Vic. No. 21 s. 126.

1 Pring 1630.

Judgment for default of appearance or defence.

17 Vic. No. 21 s. 129.

1 Pring 1630.

15 & 16 Vic. c. 76 s. 177.

Issue how made up.

17 Vic. No. 27 s. 129.

2 Pring 1630.

15 & 16 Vic. c. 76 s. 178.

Special case may be stated.

17 Vic. No. 21 s. 130.

2 Pring 1630.

15 & 16 Vic. c. 76 s. 179.

Trial may be ordered to take place in any district.

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17 Vic. No. 21 s. 133.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 182.

The Trial.

Trial of issue.
17 Vic. No. 21 s. 131.
2 Pring 1630.
15 & 16 Vic. c. 76
s. 180.

93. The claimants may if no special case be agreed to proceed to trial upon the issue in the same manner as in other actions and the particulars of the claim and defence if any or copies thereof shall be annexed to the record by the claimants and the question at the trial shall except in the cases hereafter mentioned be whether the statement in the writ of the title of the claimants is true or false and if true then which of the claimants is entitled and whether to the whole or part and if to part then to which part of the property in question and the entry of the verdict may be made in the form contained in the said schedule number twelve or to the like effect with such modifications as may be necessary to meet the facts.

Verdict when title appears to have expired before trial.
17 Vic. No. 21 s. 132.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 181.

94. In case the title of the claimant shall appear to have existed as alleged in the writ and at the time of service thereof but it shall also appear to have expired before the time of trial the claimant shall notwithstanding be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ and to a judgment for his cost of suit.

Non-appearance at trial.
17 Vic. No. 21 s. 131.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 183.

95. If the defendant appears and the claimant does not appear at the trial the claimant shall be nonsuited and if the claimant appears and the defendant does not appear the claimant shall be entitled to recover as heretofore without any proof of his title.

Special verdict and bill of exceptions.
17 Vic. No. 21 s. 135.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 184.

96. The jury may find a special verdict or either party may tender a bill of exceptions for the hearing of which matters the Supreme Court shall be deemed a Court of Error.

Judgment and Execution.

Judgment upon finding for claimant.
17 Vic. No. 21 s. 137.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 185.

97. Upon a finding for the claimant judgment may be signed and execution issue for the recovery of possession of the property or such part thereof as the jury shall find the claimant entitled to and for costs within such time as the court or judge before whom the cause is tried shall order and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen.

Judgment upon finding for defendant.
17 Vic. No. 21 s. 138.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 186.

98. Upon a finding for the defendants or any of them judgment may be signed and execution issue for costs against the claimants named in the writ within such time as the court or judge before whom the cause is tried shall order and if no such order be made then on the fifth day in term after the verdict or within fourteen days after such verdict whichever shall first happen.

Execution for recovery of possession and costs may be joint or separate.
17 Vic. No. 21 s. 139. 2 Pring 1631.
15 & 16 Vic. c. 76
s. 187.

99. Upon any judgment in ejectment for recovery of possession and costs there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the claimant.

Effect of judgment.
17 Vic. No. 21 s. 159.
2 Pring 1631.
15 & 16 Vic. c. 76
s. 207.

100. The effect of a judgment in an action of ejectment under this Act shall be the same as that of a judgment in the action of ejectment heretofore.

101. It shall not be necessary before issuing execution upon any judgment under the authority of this Act to enter the proceedings upon

upon any roll but an incipitur thereof may be made upon paper shortly describing the nature of the judgment and judgment may thereupon be signed and costs taxed and execution issued. Provided nevertheless that the proceedings may be entered upon the roll whenever the same may become necessary for the purpose of evidence or of an appeal.

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Formal entry of judgment on the roll unnecessary for purposes of execution.

17 Vic. No. 21 s. 158.
2 Pring 1634.

Tenants Joint or in Common and Coparceners.

102. In case of such an action being brought by some or one of several persons entitled as joint tenants tenants in common or coparceners any other joint tenant tenant in common or coparcener in possession may at the time of appearance or within four days after give notice in the same form as in the notice of a limited defence that he defends as such and admits the right of the claimant to an undivided share of the property (stating what share) but denies any actual ouster of him from the property and may within the same time file an affidavit stating with reasonable certainty that he is such joint tenant tenant in common or coparcener and the share of such property to which he is entitled and that he has not ousted the claimant and such notice shall be entered in the issue in the same manner as the notice limiting the defence and upon the trial of such an issue the additional question of whether an actual ouster has taken place shall be tried.

Defence by joint tenants tenants in common or coparceners.

17 Vic. No. 21 s. 140.
2 Pring 1631.

15 & 16 Vic. c. 76 s. 188.

103. Upon the trial of such issue as last aforesaid if it shall be found that the defendant is joint tenant tenant in common or coparcener with the claimant then the question whether an actual ouster has taken place shall be tried and unless such actual ouster shall be proved the defendant shall be entitled to judgment and costs but if it shall be found either that the defendant is not such joint tenant tenant in common or coparcener or that an actual ouster has taken place then the claimant shall be entitled to judgment for the recovery of possession and costs.

Trial and judgment in ejectment against joint tenants tenants in common and coparceners.

17 Vic. No. 21 s. 111.
2 Pring 1631.

15 & 16 Vic. c. 76 s. 189.

Death of Parties.

104. The death of a claimant or defendant shall not cause the action to abate but it may be continued as hereinafter mentioned.

Action not to abate by death.

17 Vic. No. 21 s. 142.
2 Pring 1632.

15 & 16 Vic. c. 76 s. 190.

Death of Claimants.

105. In case the right of the deceased claimant shall survive to another claimant a suggestion may be made of the death which suggestion shall not be traversable but shall only be subject to be set aside if untrue and the action may proceed at the suit of the surviving claimant and if such a suggestion shall be made before the trial then the claimant shall have a verdict and recover such judgment as aforesaid upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Proceeding upon claimant's death before trial where right survives.

17 Vic. No. 12 s. 143.
2 Pring 1632.

15 & 16 Vic. c. 76 s. 191.

106. In case of the death before trial of one of several claimants whose right does not survive to another or others of the claimants where the legal representative of the deceased claimant shall not become a party to the suit in the manner hereinafter mentioned a suggestion may be made of the death which suggestion shall not be traversable but shall only be subject to be set aside if untrue and the action may proceed at the suit of the surviving claimant for such share of the property as he is entitled to and costs.

Proceedings upon claimant's death before trial where right does not survive.

17 Vic. No. 21 s. 144.
2 Pring 1632.

15 & 16 Vic. c. 76 s. 192.

107. In

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Upon death of one of several claimants having obtained a verdict.

17 Vic. No. 31 s. 145, 2 Pring 1632.
15 & 16 Vic. c. 76 s. 193.

107. In case of a verdict for two or more claimants if one of such claimants die before execution executed the other claimant may whether the legal right to the property shall survive or not suggest the death in manner aforesaid and proceed to judgment and execution for recovery of possession of the entirety of the property and the costs but nothing herein contained shall affect the right of the legal representative of the deceased claimant or the liability of the surviving claimant to such legal representative and the entry and possession of such surviving claimant under such execution shall be considered as an entry and possession on behalf of such legal representative in respect of the share of the property to which he shall be entitled as such representative and the court may direct possession to be delivered accordingly.

Proceedings in case of death of claimant where right does not survive.

17 Vic. No. 21 s. 146, 2 Pring 1632.
15 & 16 Vic. c. 76 s. 194.

108. In case of the death of a sole claimant or before trial of one of several claimants whose right does not survive to another or others of the claimants the legal representative of such claimant may by leave of the court or a judge enter a suggestion of the death and that he is such legal representative and the action shall thereupon proceed and if such suggestion be made before the trial the truth of the suggestion shall be tried thereat together with the title of the deceased claimant and such judgment shall follow upon the verdict in favor of or against the person making such suggestion as hereinbefore provided with reference to a judgment for or against such claimant and in case such suggestion in the case of a sole claimant be made after trial and before execution executed by delivery of possession thereupon and such suggestion be denied by the defendant within eight days after notice thereof or such further time as the court or a judge may allow then such suggestion shall be tried and if upon the trial thereof a verdict shall pass for the person making such suggestion he shall be entitled to such judgment as aforesaid for the recovery of possession and for the costs of and occasioned by such suggestion and in case of a verdict for the defendant such defendant shall be entitled to such judgment as aforesaid for costs.

Death of Defendants.

Proceedings upon death of one of several joint defendants.

17 Vic. No. 21 s. 147, 2 Pring 1632.
15 & 16 Vic. c. 76 s. 195.

109. In case of the death before or after judgment of one of several defendants in ejectment who defend jointly a suggestion may be made of the death which suggestion shall not be traversable but only be subject to be set aside if untrue and the action may proceed against the surviving defendant to judgment and execution.

Upon death of all the defendants in ejectment before trial.

17 Vic. No. 21 s. 148, 2 Pring 1633.
15 & 16 Vic. c. 76 s. 196.

110. In case of the death of a sole defendant or of all the defendants in ejectment before trial a suggestion may be made of the death which suggestion shall not be traversable but only be subject to be set aside if untrue and the claimants shall be entitled to judgment for recovery of possession of the property unless some other person shall appear and defend within the time to be appointed for that purpose by the order of the court or a judge to be made upon the application of the claimants and it shall be lawful for the court or a judge upon such suggestion being made and upon such application as aforesaid to order that the claimants shall be at liberty to sign judgment within such time as the court or judge may think fit unless the person then in possession by himself or his tenant or the legal representative of

of the deceased defendant shall within such time appear and defend the action and such order may be served in the same manner as the writ and in case such person shall appear and defend the same proceedings may be taken against such new defendant as if he had originally appeared and defended the action and if no appearance be entered and defence made then the claimant shall be at liberty to sign judgment pursuant to the order.

111. In case of the death of a sole defendant or of all the defendants in ejectment after verdict the claimants shall nevertheless be entitled to judgment as if no such death had taken place and to proceed by execution for recovery of possession without suggestion or revivor and to proceed for the recovery of the costs in like manner as upon any other judgment for money against the legal representatives of the deceased defendant or defendants.

112. In case of the death before trial of one of several defendants in ejectment who defends separately for a portion of the property for which the other defendant or defendants do not defend the same proceedings may be taken as to such portion as in the case of the death of a sole defendant or the claimants may proceed against the surviving defendants in respect of the portion of the property for which they defend.

113. In case of the death before trial of one of several defendants in ejectment who defends separately in respect of property for which surviving defendants also defend it shall be lawful for the court or a judge at any time before the trial to allow the person at the time of the death in possession of the property or the legal representative of the deceased defendant to appear and defend on such terms as may appear reasonable and just upon the application of such person or representative and if no such application be made or leave granted the claimant suggesting the death in manner aforesaid may proceed against the surviving defendant or defendants to judgment and execution.

Discontinuance.

114. The claimant in ejectment shall be at liberty at any time to discontinue the action as to one or more of the defendants by giving to the defendant or his attorney a notice headed in the court and cause and signed by the claimant or his attorney stating that he discontinues such action and thereupon the defendant to whom such notice is given shall be entitled to and may forthwith sign judgment for costs in the form contained in the said schedule number thirteen or to the like effect.

115. In case one of several claimants shall be desirous to discontinue he may apply to the court or a judge to have his name struck out of the proceedings and an order may be made thereupon upon such terms as to the court or judge may seem fit and the action shall thereupon proceed at the suit of the other claimants.

Default in Trying.

116. If after appearance entered the claimant without going to trial shall suffer the time allowed for going to trial by the practice of the court in ordinary cases after issue joined to elapse the defendant in ejectment may give twenty days' notice to the claimant to proceed to trial.

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Upon death of all defendants in ejectment after verdict.
17 Vic. No. 21 s. 149.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 197.

Upon death before trial of defendant in ejectment who defends separately for part.
17 Vic. No. 21 s. 150.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 198.

Upon death of defendant defending separately for property in respect of which others also defend.
17 Vic. No. 21 s. 151.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 199.

Claimant may discontinue by notice.
17 Vic. No. 21 s. 152.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 200.

Discontinuance of action by one of several claimants.
17 Vic. No. 21 s. 153.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 201.

Judgment for not proceeding to trial after notice.
17 Vic. No. 21 s. 154.
2 Pring 1633.
15 & 16 Vic. c. 76 s. 202.

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Second Ejectment.

Claimant in second ejectment for same premises against same defendant may be ordered to give security for costs.
20 Vic. No. 31 s. 57.
2 Pring 1654.

117. If any person shall bring an action of ejectment after a prior action of ejectment for the same premises has been or shall have been unsuccessfully brought by such person or by any person through or under whom he claims against the same defendant or against any person through or under whom he defends the court or a judge may if they or he think fit on the application of the defendant at any time after such defendant has appeared to the writ order that the plaintiff shall give to the defendant security for the payment of the defendant's costs and that all further proceedings in the cause shall be stayed until such security be given whether the prior action has been or shall have been disposed of by discontinuance or by nonsuit or by judgment for the defendant.

Relief against Forfeitures.

Relief against forfeiture for non-payment of rent.
26 Vic. No. 7. s. 1.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 1.

118. In case of any ejectment for a forfeiture brought for non-payment of rent the court or a judge shall have power upon a rule or summons to give relief in a summary manner but subject to appeal as hereinafter mentioned up to and within the like time after execution executed and subject to the same terms and conditions in all respects as to payment of rent costs and otherwise as in a court of equity and if the lessee his executors administrators or assigns shall upon such proceeding be relieved he and they shall hold the demised lands according to the lease thereof made without any new lease.

Relief against forfeiture for non-insuring.
26 Vic. No. 7 s. 2.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 2.

119. In the case of any ejectment for a forfeiture for breach of covenant or condition to insure against loss or damage by fire the court or a judge shall have power upon a rule or summons to give relief in a summary manner but subject to appeal as hereinafter mentioned in all cases in which such relief may now be obtained in a court of equity under the provisions of "*The Equity Act of 1867*" and upon such terms as would be imposed in such court.

Minute of relief granted.
26 Vic. No. 7 s. 3.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 3.

120. Where such relief shall be granted the court or a judge shall direct a minute thereof to be made by indorsement on the lease or otherwise.

Appeal to the court from order of judge.
26 Vic. No. 7 s. 4.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 4.

121. Any order made by a judge upon an application for relief under the provisions of this Act shall be subject to an appeal to the court and may be discharged varied or set aside by the court upon such terms as the court shall think fit on application made thereto by any party dissatisfied with such order.

Notice of appeal.
26 Vic. No. 7 s. 5.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 7.

122. No appeal shall be allowed unless notice thereof shall be given in writing to the opposite party or his attorney and to the prothonotary of the Supreme Court within four days after the decision complained of or such further time as may be allowed by the court or a judge.

123. Notice

123. Notice of appeal shall be a stay of execution provided bail to pay the sum demanded and costs be given in like manner and to the same amount as bail in error within eight days after the decision complained of or before execution delivered to the sheriff.

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Bail. —
26 Vic. No. 7 s. 6.
2 Pring 1655.
23 & 24 Vic. c. 126
s. 8.

Leases.

124. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease heretofore granted or to be hereafter granted shall at any time after the commencement of this Act be given to any lessee or his assigns every such license shall unless otherwise expressed extend only to the permission actually given or to any specific breach of any proviso or covenant made or to be made or to the actual assignment under lease or other matter thereby specifically authorised to be done but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license) and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made punishable by such license in the same manner as if no such license had been given and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restriction on effect
of license to alien.
22 & 23 Vic. c. 35 s. 1.

125. When in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without license and a license at any time after the commencement of this Act shall be given to one of several lessees or co-owners to assign or underlet his share or interest or to do any other act prohibited to be done without license or shall be given to any lessee or owner or any one of several lessees or owners to assign or underlet part only of the property or to do any other such act as aforesaid in respect of part only of such property such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interests in the property or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Restricted operation
of partial license.
22 & 23 Vic. c. 35 s. 2.

126. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned the assignee of each part of the reversion shall in respect of the apportioned rent or other reservation allotted or belonging to him have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Apportionment of
conditions of re-entry
in certain cases.
22 & 23 Vic. c. 35 s. 3.

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Restriction in effect
of waiver.
23 & 24 Vic. c. 38 s. 6.

127. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs executors administrators or assigns shall be proved to have taken place after the commencement of this Act in any one particular instance such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate nor be a general waiver of the benefit of any such covenant or condition unless an intention to that effect shall appear.

Attornment of
tenants void.
11 Geo. II. c. 19 s. 11.

128. All and every attornment to a stranger of any tenant of any land within Queensland shall be absolutely null and void to all intents and purposes whatsoever and the possession of his landlord or lessor shall not be deemed or construed to be anywise changed altered or affected by any such attornment Provided always that nothing in this section contained shall extend to vacate or affect any attornment made pursuant to and in consequence of some judgment at law or decree or order of a court of equity or made with the privity and consent of the landlord or lessor or to any mortgagee after the mortgage has become forfeited.

Duty of Tenant.

Tenants to give no-
tice of ejectment to
landlord.
17 Vic. No. 21 s. 160.
2 Pring 1634.
15 & 16 Vic. c. 76
s. 209.

129. Every tenant to whom any writ in ejectment shall be delivered or to whose knowledge it shall come shall forthwith give notice thereof to his landlord or his bailiff or receiver under penalty of forfeiting the value of three years improved or rack-rent of the premises demised or holden in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Ejectment for Non-Payment of Rent.

Proceedings in eject-
ment by landlord for
non-payment of rent.
17 Vic. No. 21 s. 161.
2 Pring 1634.
15 & 16 Vic. c. 76
s. 210.

130. In all cases between landlord and tenant as often as it shall happen that one half-year's rent shall be in arrear and the landlord or lessor to whom the same is due hath right by law to re-enter for the non-payment thereof such landlord or lessor may without any formal demand or re-entry serve a writ in ejectment for the recovery of the demised premises or in case the same cannot be legally served or no tenant be in actual possession of the premises then such landlord or lessor may affix a copy thereof upon the door of any demised messuage or in case such action in ejectment shall not be for the recovery of any messuage then upon some notorious place of the lands tenements or hereditaments comprised in such writ in ejectment and such affixing shall be deemed legal service thereof which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry and in case of judgment against the defendant for non-appearance if it shall be made appear to the court where the said action is depending by affidavit or be proved upon the trial in case the defendant appears that half a year's rent was due before the said writ was served and that no sufficient distress was to be found on the demised premises countervailing the arrears then due and that the lessor had power to re-enter then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made and in case the lessee or his assignee or other person

person claiming or deriving under the said lease shall permit and suffer judgment to be had and recovered on such trial in ejectment and execution to be executed thereon without paying the rent and arrears together with full costs and without proceeding for relief in equity within six months after such execution executed then and in such case the said lessee his assignee and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease and if on such ejectment a verdict shall pass for the defendant or the claimant shall be nonsuited therein then in every such case such defendant shall have and recover his costs provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease or any part thereof who shall not be in possession so as such mortgagee shall and do within six months after such judgment obtained and execution executed pay all rent in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid and perform all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

131. In case the said lessee his assignee or other person claiming any right title or interest in law or equity of in or to the said lease shall within the time aforesaid proceed for relief in equity such person shall not have or continue any injunction against the proceedings at law on such ejectment unless he shall within forty days next after a full and perfect answer shall be made by the claimant in such ejectment bring into court and lodge with the master in equity such sum and sums of money as the lessor or landlord shall in his answer swear to be due and in arrear over and above all just allowances and also the costs taxed in the said suit there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security subject to the decree of the court and in case such proceedings for relief in equity shall be taken within the time aforesaid and after execution is executed the lessor or landlord shall be accountable only for so much and no more as he shall really and *bonâ fide* without fraud deceit or wilful neglect make of the demised premises from the time of his entering into the actual possession thereof and if what shall be so made by the lessor or landlord happen to be less than the rent reserved on the said lease then the said lessee or his assignee before he shall be restored to his possession shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

132. If the tenant or his assignee shall at any time before the trial in such ejectment pay or tender to the lessor or landlord his executors or administrators or his or their attorney in that cause or pay into the court all the rent and arrears together with the costs then and in such case all further proceedings on the said ejectment shall cease and be discontinued and if such lessee his executors administrators or assigns shall upon such proceedings as aforesaid be relieved

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Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21 s. 162.
2 Pring 1635.
15 & 16 Vic. c. 76 s. 211.

Tenant paying all rent with costs proceedings to cease.
17 Vic. No. 21 s. 163. 2 Pring 1635.
15 & 16 Vic. c. 76 s. 22.

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Tenant holding over.

Ejectment by land-
lord against tenant
holding over after
expiration of term or
determination of
tenancy by notice to
quit.
17 Vic. No. 21 s.
164. 2 Pring 1635.
15 & 16 Vic. c. 76
s. 213.

Rule or summons for
the tenant to give bail.

On rule or summons
absolute if tenant
shall not conform
judgment to be for
the landlord.

133. Where the term or interest of any tenant now or hereafter holding under a lease or agreement in writing any lands tenements or hereditaments for any term or number of years certain or from year to year shall have expired or been determined either by the landlord or tenant by regular notice to quit and such tenant or any one holding or claiming by or under him shall refuse to deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person and the landlord shall thereupon proceed by action of ejectment for the recovery of possession it shall be lawful for him at the foot of the writ in ejectment to address a notice to such tenant or person requiring him to find such bail if ordered by the court or a judge and for such purposes as are hereinafter next specified and upon the appearance of the party on an affidavit of service of the writ and notice it shall be lawful for the landlord producing the lease or agreement or some counterpart or duplicate thereof and proving the execution of the same by affidavit and upon affidavit that the premises have been actually enjoyed under such lease or agreement and that the interest of the tenant has expired or been determined by regular notice to quit as the case may be and that possession has been lawfully demanded in manner aforesaid to move the court or apply by summons to a judge at chambers for a rule or summons for such tenant or person to show cause within a time to be fixed by the court or judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognizance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action and it shall be lawful for the court or judge upon cause shown or upon affidavit of the service of the rule or summons in case no cause shall be shown to make the same absolute in the whole or in part and to order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute and in case the party shall neglect or refuse so to do and shall lay no ground to induce the court or judge to enlarge the time for obeying the same then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with shall be at liberty to sign judgment for recovery of possession and costs of suit in the form contained in the schedule to this Act annexed marked number fifteen or to the like effect.

Landlord against Tenant.

On trial of any eject-
ment between land-
lord and tenant juries
to give damages for

134. Wherever it shall appear on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney hath been served with due notice of trial the judge before whom such cause

cause shall come on to be tried shall whether the defendant shall appear upon such trial or not permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which shall or might have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein and the jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises and also as to the amount of the damages to be paid for such mesne profits and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury. Provided always that nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

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mesne profits down to the verdict or to a day specified therein.
17 Vic. No. 21 s. 165.
2 Pring 1636.
15 & 16 Vic. c. 76
s. 214

135. In all cases in which such security shall have been given as aforesaid if upon the trial a verdict shall pass for the claimant unless it shall appear to the judge before whom the same shall have been had that the finding of the jury was contrary to the evidence or that the damages given were excessive such judge shall not except by consent make any order to stay judgment or execution except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the judge shall direct conditioned not to commit any waste or act in the nature of waste or other wilful damage and not to sell or carry off any standing crops hay straw or manure produced or made (if any) upon the premises and which may happen to be thereupon from the day on which the verdict shall have been given to the day on which execution shall finally be made upon the judgment or the same be set aside as the case may be.

On trials after bail found judge shall not stay the execution except by consent or on tenant's finding security.
17 Vic. No. 21 s. 166.
2 Pring 1636.
15 & 16 Vic. c. 76
s. 215.

136. All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner and by and before such persons as the judges shall direct and shall be filed with the prothonotary for which respectively the sum of two shillings and sixpence and no more shall be paid but no action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof shall actually have been delivered to the landlord.

Recognizances to be taken as other recognizances of bail Actions on them limited.
17 Vic. No. 21 s. 167.
2 Pring 1637.
15 & 16 Vic. c. 76
s. 126.

137. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Saving of former remedies.
17 Vic. No. 21 s. 168.
2 Pring 1637.
15 & 16 Vic. c. 76
s. 218.

Mortgagor and Mortgagee.

138. Where an action of ejectment shall be brought by any mortgagee his heirs executors administrators or assignees for the recovery of the possession of any mortgaged lands tenements or hereditaments

In ejectment by mortgagee the mortgagor's rendering the principal interest and costs

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Not to extend to cases where the right of redemption is controverted or the money due not adjusted.
17 Vic. No. 21 s. 170.
2 Pring 1637.
15 & 16 Vic. c. 76 s. 220.

or to prejudice any subsequent mortgage.

139. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed shall (by writing under his hand or the hand of his attorney agent or solicitor to be delivered before the money shall be brought into court to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage or shall be admitted on the other side or to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit or shall be any prejudice to any subsequent mortgage or subsequent encumbrance anything herein contained to the contrary thereof in anywise notwithstanding.

Jurisdiction of the Court.

Jurisdiction of courts and judges.
17 Vic. No. 21 s. 171.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 221.

140. The Supreme Court and the judges thereof respectively shall and may exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment so as to ensure a trial of the title and of actual ouster when necessary only and for all other purposes for which such jurisdiction may at present be exercised and the provisions of all laws and statutes not inconsistent with the provisions of this Act and which may be applicable to the altered mode of proceeding shall remain in force and be applied thereto.

Amendment.

Amendments.
26 Vic. No. 7 s. 29.
2 Pring 1658.
15 & 16 Vic. c. 76 s. 222.

141. It shall be lawful for the Supreme Court and every judge thereof and any judge sitting as at *nisi prius* at all times to amend all defects and errors in any proceeding under the provisions of this Act whether

whether there be anything in writing to amend by or not and whether the error or errors be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the court or a judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made if duly applied for.

Penalties.

142. All penalties imposed by this Act shall be paid one moiety to Her Majesty Her Heirs and Successors for the public uses of the said colony and in the support of the government thereof and shall be applied in such manner as may be from time to time directed by any Acts of the Legislature and the other moiety to the use of the informer or party prosecuting.

Application of penalties.
15 Vic. No. 11 s. 23.
1 Pring 494.

Powers of the Court.

143. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders and to prescribe all such forms for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper. Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223.

27 Vi. No. 14 s. 20.
3 Pring 316.

144. The court or a judge shall have power to strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants.

Defence by persons not in possession.
17 Vic. No. 21 s. 127.
2 Pring 1630.

Commencement and Short Title.

145. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Distress Replevin and Ejectment Act of 1867.*"

Commencement of Act.
Short title.

SCHEDULE.

NUMBER ONE.

Warrant to Distrain.

I A. B. of do hereby authorise you C. D. of
to distrain the goods and chattels in the dwelling-house [or in and upon the farm land and premises] of E. F. situate at for £ being the amount of rent due to me for the same on the day of last [or instant] and to proceed thereon for the recovery of the said rent as the law directs.

15 Vic. No. 11 schedule A. 1 Pring 494.
Section 40.

Dated this day of A.D. 18 .

A. B.

[or A. B. by his attorney G. H.]

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15 Vic. No. 11 schedule
B. 1 Pring 494.
Section 48.

NUMBER TWO.

Inventory.

I have this day [*if distress made by a bailiff here add*] by virtue of the warrant a copy of which is hereunder written) distrained the following goods and chattels in the dwelling-house [*or in and upon the farm land and premises*] of E. F. situate at for £ being the amount of rent due to me [*or if the distress be made by a bailiff*] to A.B. of] for the same on the day of last [*or instant.*]

Dated this day of A.D. 18 .

A. B. landlord.

[*or C. D. bailiff.*]

[Enumerate the goods and chattels at full length and if distress be made by a bailiff then insert a copy of the warrant to distrain.]

NUMBER THREE.

Plaint in Replevin.

15 Vic. No. 11 schedule
G. 1 Pring 496.
Section s. 68 73 and 76.

A. B. of [*insert place of residence*] complains of C. D. of [*insert place of residence*] for that the said C. D. did on the day of last [*or instant*] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A. B. that is to say [*here describe them at full length*] for the sum of [*here insert amount distrained for*] which the said C. D. alleged to be due to him for rent.

NUMBER FOUR.

Precept to Replevy.

15 Vic. No. 11 schedule
D. 1 Pring 495.
Section s. 68 73 and 76.

A B. Esquire sheriff of Queensland [*or deputy specially appointed by the sheriff of Queensland or one of Her Majesty's justices in and for the Colony of Queensland assigned to keep the peace*] To C. D. my bailiff Because E. F. hath found me sufficient security as well for prosecuting his suit with effect against G. H. for taking his goods and chattels to wit [*specifying them*] and also for making a return thereof if return thereof shall be adjudged therefore I command you without delay to replevy and deliver to the said E. F. his said goods and chattels which the said G. H. hath taken and unjustly detained as alleged Thereof fail not.

Dated this day of A.D. 18 .

A. B. sheriff

[*or sheriff's deputy or justice of the peace.*]

NUMBER FIVE.

Replevin Bond.

15 Vic. No. 11 schedule
E. 1 Pring 495.
Section s. 68 and 73.

Know all men by these presents that we J. P. of [*place of abode and addition*] C. D. of [*place of abode and addition*] and L. H. of [*place of abode and addition*] are held and firmly bound to A. B. Esquire sheriff of Queensland [*or deputy specially appointed by the sheriff of Queensland or one of Her Majesty's justices in and for the Colony of Queensland assigned to keep the peace*] in the sum of [*insert double the value of the goods and chattels*] of lawful money of Great Britain to be paid to the said A. B. or his certain attorney executors administrators or assigns for which payment to be made we bind ourselves and each of us our respective heirs executors and administrators jointly and severally by these presents.

Dated this day of A.D. 18 .

Whereas the above A. B. upon the complaint of the above J. P. hath consented to deliver and replevy to the said J. P. the goods and chattels following to wit [*enumerate the whole of the property*] which J. N. of [*place of abode and addition*] hath taken and wrongfully withheld as the said J. P. alleges.

Now the condition of this obligation is that if the said J. P. do within one month now next ensuing commence an action against the said J. N. in the Supreme Court of Queensland or in some competent district court or small debts court or court of petty sessions and do prosecute such suit with effect and without delay against the said J. N. for the taking and withholding of the said goods and chattels and also do make return thereof if return thereof shall be adjudged by law and so defend and save harmless the said A. B. against the said J. N. and all other persons from and against all matters and things concerning the premises then this obligation shall be void otherwise it is to remain in full force.

Signed sealed and delivered }
in the presence of }

J. P.

[L S.]

C. D.

[L S.]

L. H.

[L.S.]

NUMBER

NUMBER SIX.

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Assignment of Bond.

Know all men by these presents that I the within-named A. B. have at the request of the within-named J. N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J. N. pursuant to the Act in such case made and provided in witness whereof I have hereunto set my hand and seal this day of 18 .

Signed sealed and delivered }
in the presence of } A.B. [L.S.]

NUMBER SEVEN.

Form of Writ in Ejectment.

Victoria [*et cetera*] to X.Y.Z. and all persons entitled to defend the possession of [*describe the property with reasonable certainty*] in the parish of in the county [or district of] to the possession whereof A.B. and C D. some or one of them claim to be [or to have been on and since the day of A.D.] entitled and to eject all other persons therefrom These are to command you or such of you as deny the alleged title within sixteen days after service hereof to appear in person or by attorney in our Supreme Court at Brisbane to defend the said property or such part thereof as you may be advised in default whereof judgment may be signed and you turned out of possession and take notice that the appearance if by you in person shall give an address at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service.

Witness [*et cetera*.]

NUMBER EIGHT.

Confession.

In the Supreme Court of Queensland.

Ipswich } The day of A.D. 18 .
To wit. } [*Date of writ.*]

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and C.D. has on the day of appeared by his attorney [or in person] to the said writ and the said C D. has confessed the said action [or has confessed the said action as to part of the said land that is to say *here state the part*] Therefore it is considered that the said A.B. do recover possession of the land in the said writ mentioned [or of the said part of the said land] with the appurtenances and pounds for costs.

NUMBER NINE.

Judgment in Ejectment in case of Non-Appearance.

In the Supreme Court of Queensland.

Cirenit District }
of } The day of A.D. 18 .
To wit. }

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and no appearance has been entered or defence made to the said writ Therefore it is considered that the said [*here insert the names of the persons in whom title is alleged in the writ*] do recover possession of the land in the said writ mentioned with the appurtenances.

NUMBER TEN.

Judgment by Default as to Part and Issue as to the Rest.

In the Supreme Court of Queensland.

Brisbane } The day of A.D. 18 .
to wit. } [*Date of writ.*]

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and C.D. has on the day of appeared by his attorney [or in person] to the said writ and has

31 VICTORIA No. 16. has defended for a part of the land in the writ mentioned that is to say [*here state the part*] and no appearance has been entered or defence made to the said writ except as to the said part Therefore it is considered that the said A.B. [*the claimant*] do recover possession of the land in the said writ mentioned except the said part with the appurtenances and that he have execution thereof forthwith and as to the rest let a jury come [*et cætera*].

NUMBER ELEVEN.

Issue on Defence for Whole.

In the Supreme Court of Queensland.

Brisbane [or Circuit District } On the day of A.D. 18 .
of] to wit. }

17 Vic. No. 21 schedule
No. 13. 2 Pring 1643.
Section 92.

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and C.D. has on the day of appeared by his attorney [*or in person*] to the said writ and defended for the whole of the land therein mentioned Therefore let a jury come [*et cætera*].

NUMBER TWELVE.

Entry of Verdict.

17 Vic. No. 21 schedule
No. 14. 2 Pring 1643.
Section 93.

Afterwards on the day of A.D. 18 come the parties within mentioned and a jury being sworn to try the matters in question between the parties upon their oath say that A.B. [*the claimant*] within mentioned on the day of A.D. 18 was and still is entitled to the possession of the land within-mentioned as in the writ alleged Therefore [*et cætera*].

NUMBER THIRTEEN.

Discontinuance.

In the Supreme Court of Queensland.

Brisbane } On the day of A.D. 18 .
to wit. } [*Date of writ.*]

17 Vic. No. 21 schedule
A No. 15. 2 Pring 1643.
Section 116.

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and C.D. has on the day of appeared by his attorney [*or in person*] to the said writ and A.B. has discontinued the action Therefore it is considered that the said C.D. be acquitted and that he recover against the said A.B. pounds for his costs of defence.

NUMBER FOURTEEN.

Judgment on Claimants' Default.

In the Supreme Court of Queensland.

Brisbane [or Circuit District of The day of 18 .
to wit] } [*Date of writ.*]

Schedule No. 16 17 Vic.
No. 21. 2 Pring 1643.
Section 118.

On the day and year above written a writ of our Lady the Queen issued forth of this court in these words that is to say—

Victoria by the grace of God [*here copy the writ*] and C. D. has on the day of appeared by his attorney [*or in person*] to the said writ and A. B. has failed to proceed to trial although duly required so to do Therefore it is considered that the said C. D. be acquitted and that he recover against the said A. B. pounds for his costs of defence.

NUMBER FIFTEEN.

31 VIOBLE No. 16.

Judgment for not Proceeding to Trial—Judgment against Tenant.

In the Supreme Court of Queensland.

Ipswich } The day of A.D. 18
To wit. } [*Date of writ.*]

On the day and year above written a writ of our Lady the Queen issued forth of this court with a notice thereunder written the tenor of which writ and notice follows in these words that is to say [*here copy the writ and notice which latter may be as follows*]:—

“Take notice that you will be required if ordered by the court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action” And C. D. has appeared by his attorney [*or in person*] to the said writ and has been ordered to give bail pursuant to the statute and has failed to do so Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances together with pounds for costs of suit.

17 Vic. No. 21 schedule A
No. 13. 2 Pring 1844
s. 112. Section 135.

31 VICTORIA No. 24. **An Act to Consolidate and Amend the Laws relating to Dower Inheritance Succession Wills Powers Uses and Remedies against Realty.**
[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to dower inheritance succession wills powers uses and remedies against realty Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

Meaning of words in the Act.
3 & 4 Wm. IV. c. 106
s. 1. 2 Pring 1194.

"Land."

"The Purchaser."

"Descent."

"Descendants."
3 & 4 Wm. IV. c.
105 s. 1. 2 Pring
1192.

"Persons last entitled."

"Assurance."
7 Wm. IV. & 1 Vic.
c. 26 s. 1. 2 Pring
1775.

"Will."

1. That the words and expressions hereinafter mentioned which in their ordinary signification have a more confined or a different meaning shall in this Act except where the nature of the provision or the context of the Act shall exclude such construction be interpreted as follows (that is to say) the word "land" shall extend to messuages and all other hereditaments whether corporeal or incorporeal and whether freehold or of any other tenure and whether descendible according to the common law or according to any other law or custom and to money to be laid out in the purchase of land and to chattels and other personal property transmissible to heirs and also to any share of the same hereditaments and properties or any of them and to any estate of inheritance or estate for any life or lives or other estate transmissible to heirs and to any possibility right or title of entry or action and any other interest capable of being inherited and whether the same estates possibilities rights titles and interests or any of them shall be in possession reversion remainder or contingency and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent or than by any escheat partition or inclosure by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent and the word "descent" shall mean the title to inherit land by reason of consanguinity as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor and the expression "the person last entitled to land" shall extend to the last person who had a right thereto whether he did or did not obtain the possession or the receipt of the rents and profits thereof and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity and the word "will" shall extend to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament or devise of the custody and tuition of any child and to any other testamentary disposition and the words
"real

“real estate” shall extend to messuages lands rents and hereditaments whether freehold or of any other tenure and whether corporeal incorporeal or personal and to any undivided share thereof and to any estate right or interest (other than a chattel interest) therein and the words “personal estate” shall extend to leasehold estates and other chattels real and also to moneys shares of Government and other funds securities for money (not being real estates) debts choses in action rights credits goods and all other property whatsoever which by law devolves upon the executor or administrator and to any share or interest therein Provided that in the fifteen sections next hereupon following the word “land” shall not extend to such hereditaments as are not now liable to dower nor any land which by any Act heretofore passed may have been exempted from dower.

Right to Dower or Provision.

2. When a husband shall have been entitled to a right of entry or action in any land and his widow would be entitled to dower out of the same if he had recovered possession thereof she shall be entitled to dower out of the same although her husband shall not have recovered possession thereof Provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

3. When a husband shall die beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law and such interest whether wholly equitable or partly legal and partly equitable shall be an estate of inheritance in possession or equal to an estate of inheritance in possession (other than an estate in joint-tenancy) then his widow shall be entitled in equity to dower out of the same land.

4. No gift or bequest made by any husband to or for the benefit of his widow of or out of his personal estate or of or out of any of his land not liable to dower shall defeat or prejudice her right to dower unless a contrary intention shall be declared by his will.

5. Provided always that nothing in this Act contained shall prevent any court of equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

6. Nothing in this Act contained shall interfere with any rule of equity or of ecclesiastical law by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

Restrictions on the Right.

7. No widow shall hereafter be entitled to dower *ad ostium ecclesiae* or dower *ex assensu patris*.

8. No claim to dower on the part of the widow of any deceased owner of land shall have any force at law or in equity against any person claiming by purchase from such owner for valuable consideration unless it shall be proved that the claimant resided in Queensland with and as the wife of such deceased owner before his sale of the land or that the purchaser had notice before or at the time of sale of the fact of the deceased owner having been married to the claimant and in case the defendant resisting such claim shall derive title through

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“Real estate.”

“Personal estate.”

3 & 4 Wm. IV. c. 105
s. 1. 2 Pring 1192.

Seisin shall not be necessary to give title to dower.
3 & 4 Wm. IV. c. 105
s. 3. 2 Pring 1193.

Widows to be entitled to dower out of equitable estates.
3 & 4 Wm. IV. c. 105
s. 2. 2 Pring 1193.

Bequest of personal estate to widow shall not bar her dower.
3 & 4 Wm. IV. c. 105
s. 10. 2 Pring 1193.

Agreement not to bar dower may be enforced.
3 & 4 Wm. IV. c. 105
s. 11. 2 Pring 1193.

Legacies in bar of dower still entitled to preference.
3 & 4 Wm. IV. c. 105
s. 12. 2 Pring 1193.

Certain dowers abolished.
3 & 4 Wm. IV. c. 105
s. 13. 2 Pring 1193.

Residence of wife in the colony or knowledge of her existence at time of sale required.
14 Vic. No. 27 s. 1.
2 Pring 1194.

31 VICTORIA No. 21. through the original purchaser from such deceased owner it shall not be sufficient to prove such knowledge on the part of the original purchaser without also showing that before the defendant purchased the land either the claimant had resided with her husband in the said colony or the defendant had become acquainted with the said fact of marriage.

Claim to dower limited.
14 Vic. No. 27. s. 2.
2 Pring 1194.

9. The claim to dower out of any land by the widow of any person who has or shall have alienated such land for valuable consideration shall be limited to one-third of the estimated rent for the time being of such land considered as if remaining in the state of improvement in which the same shall have been at the time of such alienation and shall not be recoverable by metes and bounds but shall be assignable by a court of equity only with liberty nevertheless to such court to direct the trial at law of any issue of fact on which the assessment of the claim shall depend.

No dower out of estate disposed of.
3 & 4 Wm. IV. c. 105 s. 4. 2 Pring 1193.

10. No widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will.

Dower may be barred by a declaration in a deed.
3 & 4 Wm. IV. c. 105 s. 6. 2 Pring 1193.

11. A widow shall not be entitled to dower out of any land of her husband when in the deed by which such land was conveyed to him or by any deed executed by him it shall be declared that his widow shall not be entitled to dower out of such land.

Or by a declaration in the husband's will.
3 & 4 Wm. IV. c. 105 s. 7. 2 Pring 1193.

12. A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate when by the will of her husband duly executed for the devise of freehold estates he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his land.

Dower shall be subject to restrictions.
3 & 4 Wm. IV. c. 105 s. 8. 2 Pring 1193.

13. The right of a widow to dower shall be subject to any conditions restrictions or directions which shall be declared by the will of her husband duly executed as aforesaid.

Devise of real estate to the widow shall bar her dower.
3 & 4 Wm. IV. c. 105 s. 9. 2 Pring 1193.

14. Where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised or any estate or interest therein to or for the benefit of his widow such widow shall not be entitled to dower out of or in any land of her said husband unless a contrary intention shall be declared by his will.

Priority to partial estates charges and specialty debts.
3 & 4 Wm. IV. c. 105 s. 5. 2 Pring 1193.

15. All partial estates and interests and all charges created by any disposition or will of a husband and all debts encumbrances contracts and engagements to which his land shall be subject or liable shall be valid and effectual as against the right of his widow to dower.

Descent to be traced from the Purchaser.

Descent shall always be traced from the purchaser but the last owner shall be considered to be the purchaser unless the contrary be proved.
3 & 4 Wm. IV. c. 106 s. 2. 2 Pring 1195.

16. In every case descent shall be traced from the purchaser and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof unless it shall be proved that he inherited the same in which case the person from whom he inherited the same shall be considered to have been the purchaser unless it shall be proved that he inherited the same and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser unless it shall be proved that he inherited the same.

17. When

17. When any land shall have been devised by any testator to the heir or to the person who shall be the heir of such testator such heir shall be considered to have acquired the land as a devisee and not by descent and when any land shall have been limited by any assurance to the person or to the heirs of the person who shall thereby have conveyed the same land such person shall be considered to have acquired the same as a purchaser by virtue of such assurance and shall not be considered to be entitled thereto as his former estate or part thereof.

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Heir entitled under a will shall take as devisee and a limitation to the grantor or his heirs shall create an estate by purchase.
3 & 4 Wm. IV. c. 106 s. 3. 2 Pring 1195.

18. When any person shall have acquired any land by purchase under a limitation to the heirs or to the heirs of the body of any of his ancestors contained in any assurance or under a limitation to the heirs or to the heirs of the body of any of his ancestors or under any limitation having the same effect contained in a will of any testator then and in any of such cases such land shall descend and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

Where heirs take by purchase under limitations to the heirs of their ancestor the land shall descend as if the ancestor had been the purchaser.
3 & 4 Wm. IV. c. 106 s. 4. 2 Pring 1195.

Descent to be Lineally Traced.

19. No brother or sister shall be considered to inherit immediately from his or her brother or sister but every descent from a brother or sister shall be traced through the parent.

Brothers &c. shall trace descent through their parent.
3 & 4 Wm. IV. c. 106 s. 5. 2 Pring 1196.

20. Every lineal ancestor shall be capable of being heir to any of his issue and in every case where there shall be no issue of the purchaser his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit either by tracing his descent through such lineal ancestor or in consequence of there being no descendant of such lineal ancestor so that the father shall be preferred to a brother or sister and a more remote lineal ancestor to any of his issue other than a nearer lineal ancestor or his issue.

Lineal ancestor may be heir in preference to collateral persons claiming through him.
3 & 4 Wm. IV. c. 106 s. 6. 2 Pring 1196.

Maternal Ancestors.

21. None of the maternal ancestors of the person from whom the descent is to be traced nor any of their descendants shall be capable of inheriting until all his paternal ancestors and their descendants shall have failed and also no female paternal ancestor of such person nor any of her descendants shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed and no female maternal ancestor of such person nor of any of her descendants shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The male line to be preferred.
3 & 4 Wm. IV. c. 106 s. 7. 2 Pring 1196.

22. Where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced and their descendants the mother of his more remote male paternal ancestor or her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male paternal ancestor or her descendants and where there shall be a failure of male maternal ancestors of such person and their descendants the mother of his more remote male maternal ancestor and her descendants shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor and her descendants.

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.
3 & 4 Wm. IV. c. 106 s. 8. 2 Pring 1196.

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The Half Blood.

Half blood if on the part of a male ancestor to inherit after the whole blood of the same degree if on the part of a female ancestor after her.

3 & 4 Wm. IV. c. 106 s. 9. 2 Pring 1196.

23. Any person related to the person from whom the descent is to be traced by the half blood shall be capable of being his heir and the place in which any such relation by the half blood shall stand in the order of inheritance so as to be entitled to inherit shall be next after any relation in the same degree of the whole blood and his issue where the common ancestor shall be a male and next after the common ancestor where such common ancestor shall be a female so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue and the brother of the half blood on the part of the mother shall inherit next after the mother.

Escheat and Forfeiture.

After the death of a person attainted his descendants may inherit.

3 & 4 Wm. IV. c. 106 s. 10. 2 Pring 1196.

24. When the person from whom the descent of any land is to be traced shall have had any relation who having been attainted shall have died before such descent shall have taken place then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted.

No escheat of property held upon trust or mortgage.

16 Vic. No. 19 s. 44. 2 Pring 1729.

25. No lands stock or chose in action vested in any person upon any trust or by way of mortgage or any profits thereof shall escheat or be forfeited to Her Majesty by reason of the attainder or conviction for any offence of such trustee or mortgagee but shall remain in such trustee or mortgagee or survive to his or her co-trustee or descend or vest in his or her representative as if no such attainder or conviction had taken place.

Act not to prevent escheat or forfeiture of beneficial interest.

16 Vic. No. 19 s. 45. 2 Pring 1729.

26. Nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgage so far as relates to any beneficial interest therein of any such trustee or mortgagee but such lands or personal estate so far as relates to any such beneficial interest shall be recoverable in the same manner as if this Act had not passed.

Failure of Heirs.

Descent how to be traced.

22 & 23 Vic. c. 35 s. 19.

27. When there shall be a total failure of heirs of the purchaser or where any land shall be descendible as if an ancestor had been the purchaser thereof and there shall be a total failure of the heirs of such ancestor then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.

Estates pur autre Vie.

Estates *pur autre vie*.

7 Wm. IV. & 1 Vic. c. 26 s. 6. 2 Pring 1178.

See 54 Geo. III. c. 15 s. 4. 1 Pring 471.

28. If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature the same shall be chargeable in the hands of the heir if it shall come to him by reason of special occupancy as assets by descent as in the case of freehold land in fee-simple and in case there shall be no special occupant of any estate *pur autre vie* whether freehold or of any other tenure and whether a corporeal or incorporeal hereditament it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act it shall be assets in his hands

hands and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate. 31 VICTORIA No. 21.

Statute of Distributions.

29. The Supreme Court and every person who by any Act is enabled to make distribution of the surplusage of the estate of any person dying intestate shall distribute the whole surplusage of such estate or estates in manner and form following (that is to say) one third part of the said surplusage to the wife of the intestate and all the residue by equal portions to and amongst the children of such persons dying intestate and such persons as legally represent such children in case any of the said children be then dead other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate or shall be advanced by the intestate in his lifetime by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made and in case any child other than the heir at law who shall have any estate by settlement from the said intestate or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate or were advanced in the lifetime of the intestate as shall make the estate of all the said children to be equal as near as can be estimated. But the heir at law notwithstanding any land that he shall have by descent or otherwise from the intestate is to have an equal part in the distribution with the rest of the children without any consideration of the value of the land which he hath by descent or otherwise from the intestate.

How and to whom the surplusage is to be distributed.
22 & 23 Car. 2 c. 10 s. 5.

One-third to wife and residue amongst the children.

Advancement by portion.

Heir at law to have an equal part.

30. And in case there be no children nor any legal representatives of them then one moiety of the said estate to be allotted to the wife of the intestate the residue of the said estate to be distributed equally to every of the next of kindred of the intestate who are in equal degree and those who legally represent them.

If no children then one moiety to wife and residue to next of kin.
22 & 23 Car. 2 c. 10 s. 6.

31. Provided that there be no representations admitted among collaterals after brothers' and sisters' children. And in case there be no wife then all the said estate to be distributed equally to and amongst the children and in case there be no child then to the next of kindred in equal degree of or unto the intestate and their legal representatives as aforesaid and in no other manner whatsoever.

If no wife then to be distributed amongst the children.
22 & 23 Car. 2 c. 10 s. 7.

32. Provided also to the end that a due regard be had to creditors that no such distribution of the goods of any person dying intestate be made till after one year be fully expired after the intestate's death and that such and every one to whom any distribution and share shall be allotted shall give bond with sufficient sureties in the Supreme Court that if any debt or debts truly owing by the intestate shall be afterwards sued for and recovered or otherwise duly made to appear that then and in every such case he or she shall respectively refund and pay back to the administrator his or her rateable part of that debt or debts and of the costs of suit and charges of the administrator by reason of such debt.

No distribution till after one year.
22 & 23 Car. 2 c. 10 s. 8.

If debts afterwards appear then all to refund proportionally

31 VICTORIÆ No. 24. debt out of the part and share so as aforesaid allotted to him or her thereby to enable the said administrator to pay and satisfy the said debt or debts so discovered after the distribution made as aforesaid.

This Act shall not extend to administration *cum testamento annexo*.

22 & 23 Car. 2 c. 10 s. 9.

Executors deemed to be trustees for persons entitled to any residue under the statute of distributions unless otherwise directed by will. 11 Geo. IV. & 1 Wm. IV. c. 40 s. 1. 2 Pring 1774.

Not to affect rights of executors where there is no person entitled to the residue.

11 Geo. IV. & 1 Wm. IV. c. 40 s. 2. 2 Pring 1774.

All property may be disposed of by will comprising freeholds also such of them as cannot now be devised.

Estates *pur autre vie*.

Contingent interests.

Rights of entry and property required after execution of the will.

7 Wm. IV. & 1 Vic. c. 26 s. 3. 2 Pring 1776.

No will of a minor valid.

7 Wm. IV. & 1 Vic. c. 26 s. 7. 2 Pring 1778.

Nor of a *femme covert* except such as might now be made.

7 Wm. IV. & 1 Vic. c. 26 s. 8. 2 Pring 1778.

33. Provided also that in all cases where the Supreme Court hath used heretofore to grant administration *cum testamento annexo* it shall continue so to do and the will of the deceased in such testament expressed shall be performed and observed.

34. When any person shall die having by his or her will or any codicil or codicils thereto appointed any person or persons to be his or her executor or executors such executor or executors shall be deemed by courts of equity to be a trustee or trustees for the person or persons (if any) who would be entitled to the estate under the statute of distributions in respect of any residue not expressly disposed of unless it shall appear by the will or any codicil thereto the person or persons so appointed executor or executors was or were intended to take such residue beneficially.

35. Provided that nothing in the section last preceding contained shall affect or prejudice any right to which any executor if this Act had not been passed would have been entitled in cases where there is not any person who would be entitled to the testator's estate under the present or any statute of distributions in respect of any residue not expressly disposed of.

Wills.

36. It shall be lawful for every person to devise bequeath or dispose of by his will executed in manner hereinafter required all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death and which if not so devised bequeathed or disposed of would devolve upon the heir-at-law of him or if he became entitled by descent of his ancestor or upon his executor or administrator and also all estates *pur autre vie* whether there shall or shall not be any special occupant thereof and whether the same shall be freehold or of any other tenure and whether the same shall be a corporeal or incorporeal hereditament and also all contingent executory or other future interests in any real or personal estate whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will and also all rights of entry for conditions broken and other rights of entry and also such of the same estates interests and rights respectively and other real and personal estate as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

Competency of Testators.

37. No will made by any person under the age of twenty-one years shall be valid.

38. Provided also that no will made by any married woman shall be valid except such a will as might have been made by a married woman before the passing of this Act.

Execution

Execution and Attestation of Wills and Powers.

31 VICTORIA No. 24.

39. No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned and required (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time and such witnesses shall attest and shall subscribe the will in the presence of the testator but no form of attestation shall be necessary.

Every will, to be in writing and signed by the testator in the presence of two witnesses.

7 Wm. 1V. & 1 Vic. c. 26 s. 9. 2 Pring 1778.

40. Every such will shall so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid be deemed to be valid if the signature shall be so placed at or after or following or under or beside or opposite to the end of the will that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will and no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation or shall follow or be after or under the clause of attestation either with or without a blank space intervening or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature and the enumeration of the above circumstances shall not restrict the generality of the above enactment but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature shall be made.

When signature to a will shall be deemed valid.

17 Vic. No. 5 s. 1. 2 Pring 1782. 15 & 16 Vic. c. 24.

41. The provisions of the section last preceding shall extend and be applied to every will already made where administration or probate has not already been granted or ordered in consequence of the defective execution of such will or where the property being other than personalty has not been possessed or enjoyed by some person claiming to be entitled thereto in consequence of the defective execution of such will or the right thereto shall not have been decided to be in some other person than the person claiming under the will in consequence of the defective execution of such will.

Act to extend to certain wills already made.

17 Vic. No. 5 s. 2. 2 Pring 1782.

42. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that a will made in exercise of

Appointments by will to be executed like other wills &c.

7 Wm. 1V. & 1 Vic. c. 26 s. 10. 2 Pring 1778.

such

31 VICTORIA No. 24. such power should be executed with some additional or other form of execution or solemnity.

Soldiers' and mariners' wills excepted.
7 Wm. IV. & 1 Vic.
c. 26 s. 11. 2 Pring
1778.

Act not to affect provisions of 11 Geo. IV. and 1 Wm. IV. c. 20 with respect to wills of petty officers &c.
7 Wm. IV. & 1 Vic.
c. 26 s. 12. 2 Pring
1778.

43. Provided always that any soldier being in actual military service or any mariner or seaman being at sea may dispose of his personal estate as he might have done before the making of this Act.

44. This Act shall not prejudice or affect any of the provisions contained in an Act passed in the eleventh year of the reign of His Majesty King George the Fourth and the first year of the reign of His late Majesty King William the Fourth intituled "*An Act to amend and consolidate the laws relating to the pay of the royal navy*" respecting the wills of petty officers and seamen in the royal navy and non-commissioned officers of marines and marines so far as relates to their wages pay prize money bounty money and allowances or other moneys payable in respect of services in Her Majesty's navy.

Publication.

Publication not to be requisite.

7 Wm. IV. & 1 Vic.
c. 26 s. 13. 2 Pring
1778.

Will not void by incompetency of witness.

7 Wm. IV. & 1 Vic.
c. 26 s. 14. 2 Pring
1779.

Gifts to an attesting witness to be void.

7 Wm. IV. & 1 Vic.
c. 26 s. 15. 2 Pring
1779.

Creditor attesting to be admitted a witness.

7 Wm. IV. & 1 Vic.
c. 26 s. 16. 2 Pring
1779.

Executor to be admitted a witness.

7 Wm. IV. & 1 Vic.
c. 26 s. 17. 2 Pring
1779.

Will to be revoked by marriage.

7 Wm. IV. & 1 Vic.
c. 26 s. 18. 2 Pring
1779.

45. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

Competency of Attesting Witnesses.

46. If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

47. If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise legacy estate interest gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made such devise legacy estate interest gift or appointment shall so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person or wife or husband be utterly null and void and such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof notwithstanding such devise legacy estate interest gift or appointment mentioned in such will.

48. In case by any will any real or personal estate shall be charged with any debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged shall attest the execution of such will such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

49. No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

Revocation and Alteration.

50. Every will made by a man or woman shall be revoked by his or her marriage except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir executor

executor or administrator or the person entitled as his or her next of kin under any statute of distribution. 31 VICTORIA No. 21.

51. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. No will to be revoked by presumption.
7 Wm. IV. & 1 Vic. c. 26 s. 19. 2 Pring 1779.

52. No will or codicil or any part thereof shall be revoked otherwise than as aforesaid or by another will or codicil executed in manner hereinbefore required or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed or by the burning tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same. In what cases wills may be revoked.
7 Wm. IV. & 1 Vic. c. 26 s. 20. 2 Pring 1779.

53. No obliteration interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will. No alteration in a will shall have any effect unless executed as a will.
7 Wm. IV. & 1 Vic. c. 26 s. 21. 2 Pring 1779.

Revival.

54. No will or codicil or any part thereof which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner hereinbefore required and showing an intention to revive the same and when any will or codicil which shall be partly revoked and afterwards wholly revoked shall be revived such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof unless an intention to the contrary shall be shown. How revoked will shall be revived.
7 Wm. IV. & 1 Vic. c. 26 s. 22. 2 Pring 1779.

Construing of Wills.

55. No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised except an act by which such will shall be revoked as aforesaid shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death. When a devise not to be rendered inoperative &c.
7 Wm. IV. & 1 Vic. c. 26 s. 23. 2 Pring 1780.

56. Every will shall be construed with reference to the real estate and personal estate comprised in it to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention shall appear by the will. A will to speak from the death of the testator.
7 Wm. IV. & 1 Vic. c. 26 s. 24. 2 Pring 1780.

57. Unless a contrary intention shall appear by the will such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator or by reason of such devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise (if any) contained in such will. What a residuary devise shall include.
7 Wm. IV. & 1 Vic. c. 26 s. 25. 2 Pring 1780.

31 VICTORIA No. 24.

What a general devise shall include.

7 Wm. IV. & 1 Vic. c. 26 s. 26. 2 Pring 1780.

58. A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it shall be construed to include the leasehold estates of the testator or his leasehold estates or any of them to which such description shall extend (as the case may be) as well as freehold estates unless a contrary intention shall appear by the will.

What a general gift shall include.

7 Wm. IV. & 1 Vic. c. 26 s. 27. 2 Pring 1780.

59. A general devise of the real estate of the testator or of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real estate or any real estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear by the will and in like manner a bequest of the personal estate of the testator or any bequest of personal property described in a general manner shall be construed to include any personal estate or any personal estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention shall appear by the will.

How a devise without words of limitation shall be construed.

7 Wm. IV. & 1 Vic. c. 26 s. 28. 2 Pring 1779.

60. Where any real estate shall be devised to any person without any words of limitation such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a contrary intention shall appear by the will.

How the words "die without issue" or "die without leaving issue" or "have no issue" shall be construed.

7 Wm. IV. & 1 Vic. c. 26 s. 29. 2 Pring 1780.

61. In any devise or bequest of real or personal estate the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue unless a contrary intention shall appear by the will by reason of such person having a prior estate tail or of a preceding gift being without any implication arising from such words a limitation of an estate tail to such person or issue or otherwise. Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Trustees and Executors.

No devise to trustees or executors except &c. shall pass a chattel interest.

7 Wm. IV. & 1 Vic. c. 26 s. 30. 2 Pring 1781.

62. Where any real estate shall be devised to any trustee or executor such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a definite term of years absolute or determinable or an estate of freehold shall thereby be given to him expressly or by implication.

63. Where

63. Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real estate or in the surplus rents and profits thereof shall not be given to any person for life or such beneficial interest shall be given to any person for life but the purposes of the trust may continue beyond the life of such person such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate and not an estate determinable when the purposes of the trust shall be satisfied.

31 VICTORIA No. 21.
Trustees under an unlimited devise &c. to take the fee.
7 Wm. IV. & 1 Vic. c. 26 s. 31. 2 Pring 1781.

Lapse.

64. Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail and any such issue shall be living at the time of the death of the testator such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention shall appear by the will.

Devises of estates tail shall not lapse.
7 Wm. IV. & 1 Vic. c. 26 s. 32. 2 Pring 1781.

65. Where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue and any such issue of such person shall be living at the time of the death of the testator such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.
7 Wm. IV. & 1 Vic. c. 26 s. 33. 2 Pring 1781.

Powers.

66. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity Provided always that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution or that any act shall be performed in order to give validity to any appointment having no relation to the mode of executing and attesting the instrument and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed and to any such execution of a power this provision shall not extend.

Mode of execution of powers.
22 & 23 Vic. c. 35 s. 12.

67. Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon or any other articles attached thereto and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles it shall be lawful for the Supreme Court upon any bill or application in a summary

Sale under power not to be avoided by reason of mistaken payment to tenant for life.
22 & 23 Vic. c. 25 s. 15.

way

31 VICTORIA No. 24. way as the case may require or permit to declare that upon payment by the purchaser or the claimant under him of the full value of the timber and articles at the time of sale with such interest thereon as the court shall direct and the settlement of the said principal moneys and interest under the direction of the court upon such parties as in the opinion of the court shall be entitled thereto the said sale ought to be established and upon such payment and settlement being made accordingly the court may declare that the said sale is valid and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him.

Devisee in trust may raise money by sale notwithstanding want of express power in the will.
22 & 23 Vic. c. 35
s. 14.

68. Where by any will which shall come into operation after the commencement of this Act the testator shall have charged his real estate or any specific portion thereof with the payments of his debts or with the payment of any legacy or other specific sum of money and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein and shall not have made any express provision for the raising of such debt legacy or sum of money out of such estate it shall be lawful for the said devisee or devisees in trust notwithstanding any trusts actually declared by the testator to raise such debts legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given by last section extended to survivors devisees &c.
22 & 23 Vic. c. 38
s. 15.

69. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship descent or devise or to any person or persons who may be appointed under any power in the will or by the court to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Executors to have power of raising money &c. when there is no sufficient devise.
22 & 23 Vic. c. 38
s. 16.

70. If any testator who shall have created such a charge as is described in the section next but one preceding shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable of the testator and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers &c. not bound to inquire as to powers.
22 & 23 Vic. c. 35
s. 17.

71. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the three sections last preceding of this Act or either of them shall have been duly and exercised by the person or persons acting in virtue thereof.

72. The

72. The provisions contained in the said three sections shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the commencement of this Act but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed and the said several sections shall not extend to a devise to any person or persons in fee or in tail or for the testator's whole estate and interest charged with debts or legacies nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

31 VICTORIA No. 24.
Sections 69 70 and 71 not to affect certain sales &c. nor to extend to devisees in fee or in tail.
22 & 23 Vic. c. 35 s. 18.

Uses.

73. Where by any instrument any hereditaments have been or shall be limited to uses all uses thereunder whether expressed or implied by law and whether immediate or future or contingent or executory or to be declared under any power therein contained shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses and the continued existence in him or elsewhere of any seisin to uses or *sciutilla juris* shall not be deemed necessary for the support of or to give effect to future or contingent or executory uses nor shall any such seisin to uses or *sciutilla juris* be deemed to be suspended or to remain or to subsist in him or elsewhere.

Provision for cases of future and contingent uses.
23 & 24 Vic. c. 38 s. 7.

74. This Act shall not extend to any will made before the first day of January one thousand eight hundred and forty and every will re-executed or re-published or revived by any codicil shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed re-published or revived and that this Act shall not extend to any estate *pur autre vie* of any person who shall have died before the first day of January one thousand eight hundred and forty.

To what wills and estates this Act shall not extend.
7 Wm. IV. & 1 Vic. c. 26 s. 31.

Remedies of Creditors against Realty.

75. And whereas it is not reasonable or just that by the practice or contrivance of any debtors their creditors should be defrauded of their just debts and nevertheless it hath often so happened that where several persons having by bonds covenants or other specialties bound themselves and their heirs and have afterwards died seized in fee simple of and in messuages lands tenements and hereditaments or had power or authority to dispose of or charge the same by their wills or testaments have to the defrauding of such their creditors by their last wills or testaments devised the same or disposed thereof in such manner as such creditors have lost their said debts for remedying of which and for the maintenance of just and upright dealing be it therefore further enacted That all wills and testamentary limitations dispositions or appointments already made by persons now in being or hereafter to be made by any person or persons whomsoever of or concerning any messuages lands tenements or hereditaments or any rent profit term or charge out of the same whereof any person or persons at the time of his her or their decease shall be seized in fee simple in possession reversion or remainder or have power to dispose of the same by his her or their last wills or testaments shall be deemed or taken (only as against

For remedying frauds committed on creditors by wills.
11 Geo. IV. & 1 Wm. IV. c. 47 s. 2.
1 Pring 475.

31 VICTORIA No. 24. against such person or persons bodies politic or corporate and his and their heirs successors executors administrators and assigns and every of them with whom the person or persons making any such wills or testaments limitations dispositions or appointments shall have entered into any bond covenant or other specialty binding his her or their heirs) to be fraudulent and clearly absolutely and utterly void frustrate and of none effect any pretence color feigned or presumed consideration or any other matter or thing to the contrary notwithstanding.

Enabling creditors to recover upon bonds &c.

11 Geo. IV. & 1 Wm.

IV. c. 47 s. 3.

1 Pring 475.

76. And for the means that such creditors may be enabled to recover upon such bonds covenants and other specialties be it further enacted That in the cases before mentioned every such creditor shall and may have and maintain his her and their action and actions of debt or covenant upon the said bonds covenants and specialties against the heir and heirs at law of such obligor or obligors covenantor or covenantors and such devisee and devisees or the devisee or devisees of such first-mentioned devisee or devisees jointly by virtue of this Act and such devisee and devisees shall be liable and chargeable for a false plea by him or them pleaded in the same manner as any heir should have been for any false plea by him pleaded or for not confessing the lands or tenements to him descended.

If there is no heir at law actions may be maintained against the devisee.

11 Geo. IV. & 1 Wm.

IV. c. 47 s. 4.

1 Pring 475.

77. If in any case there shall not be any heir at law against whom jointly with the devisee or devisees a remedy is hereby given in every such case every creditor to whom by this Act relief is so given shall and may have and maintain his her and their action and actions of debt or covenant as the case may be against such devisee or devisees solely and such devisee or devisees shall be liable for false plea as aforesaid.

Not to affect limitations for just debts or portions for children.

11 Geo. IV. & 1 Wm.

IV. c. 47 s. 5.

1 Pring 476.

78. Provided that where there hath been or shall be any limitation or appointment devise or disposition of or concerning any messuages lands tenements or hereditaments for the raising or payment of any real and just debt or debts or any portion or portions sum or sums of money for any child or children of any person according to or in pursuance of any marriage contract or agreement in writing *bonâ fide* made before such marriage the same and every of them shall be in full force and the same messuages lands tenements and hereditaments shall and may be holden and enjoyed by every such person or persons his her and their heirs executors administrators and assigns for whom the said limitation appointment devise or disposition was made and by his her and their trustee or trustees his her and their heirs executors administrators and assigns for such estate or interest as shall be so limited or appointed devised or disposed until such debt or debts portion or portions shall be raised paid and satisfied anything in this Act contained to the contrary notwithstanding.

Heir at law to be answerable for debts although he may sell estate before action brought.

11 Geo. IV. & 1 Wm.

IV. c. 47 s. 6.

1 Pring 476.

79. In all cases where any heir at law shall be liable to pay the debts or perform the covenants of his ancestors in regard of any lands tenements or hereditaments descended to him and shall sell alien or make over the same before any action brought or process sued out against him such heir at law shall be answerable for such debt or debts or covenants in an action or actions of debt or covenant to the value of the said lands so by him sold aliened or made over in which cases all creditors shall be preferred as in actions against executors and administrators

administrators and such execution shall be taken out upon any judgment or judgments so obtained against such heir to the value of the said land as if the same were his own proper debt or debts saving that the lands tenements and hereditaments *bond fide* aliened before the action brought shall not be liable to such execution.

80. Provided that where any action of debt or covenant upon any specialty is brought against the heir he may plead *riens per descent* at the time of the original writ brought or the bill filed against him anything herein contained to the contrary notwithstanding and the plaintiff in such action may reply that he had lands tenements or hereditaments from his ancestors before the original writ brought or bill filed and if upon the issue joined thereupon it be found for the plaintiff the jury shall inquire of the value of the lands tenements or hereditaments so descended and thereupon judgment shall be given and execution shall be awarded as aforesaid but if judgment be given against such heir by confession of the action without confessing the assets descended or upon demurrer or *nihil dicit* it shall be for the debt and damage without any writ to inquire of the lands tenements or hereditaments so descended.

Where an action of debt is brought against the heir he may plead *riens per descent*.
11 Geo. IV. & 1 Wm. IV. c. 47 s. 7.
1 Pring 476.

81. Provided that all and every the devisee and devisees made liable by this Act shall be liable and chargeable in the same manner as the heir at law by force of this Act notwithstanding the lands tenements and hereditaments to him or them devised shall be aliened before the action brought.

Devisees to be liable the same as heirs at law.
11 Geo. IV. & 1 Wm. IV. c. 47 s. 8.
1 Pring 476.

82. From and after the fourth day of August one thousand eight hundred and thirty-four where any person being at the time of his death a trader within the true intent and meaning of the laws relating to bankrupts shall have died seized of or entitled to any estate or interest in lands tenements or hereditaments or other real estate which he shall not by his last will have charged with or devised subject to or for the payment of his debts and which would be assets for the payment of his debts due on any specialty in which the heirs were bound the same shall be assets to be administered in courts of equity for the payment of all the just debts of such person as well debts due on simple contract as on specialty and the heir or heirs at law devisee or devisees of such debtor and the devisee or devisees of such first-mentioned devisee or devisees shall be liable to all the same suits in equity at the suit of any of the creditors of such debtor whether creditors by simple contract or by specialty as they are liable to at the suit of creditors by specialty in which the heirs were bound. Provided always that in the administration of assets by courts of equity under and by virtue of this provision all creditors by specialty in which the heirs are bound shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound shall be paid any part of their demands.

Traders' estates shall be assets to be administered in courts of equity.
11 Geo. IV. & 1 Wm. IV. c. 47 s. 9.
1 Pring 476.
5 Wm. IV. No. 8,
1 Pring 474.

Creditors by specialty to be paid first.

83. From and after the day and year last aforesaid where any action suit or other proceeding for the payment of debts or any other purpose shall be or have been commenced or prosecuted by or against any infant under the age of twenty years either alone or together with any other person or persons the parol shall not demur but such action

Parol shall not demur by or against infants.
11 Geo. IV. & 1 Wm. IV. c. 47 s. 10.
1 Pring 477.

31 VICTORIA No. 24. suit or other proceeding shall be prosecuted and carried on in the same manner and as effectually as any action or suit could before the passing of this Act be carried on or prosecuted by or against any infant where according to law the parol did not demur.

Infants to make conveyances under order of the court.

11 Geo. IV. & 1 Wm. IV. c. 47 s. 11.
1 Pring 477.

84. Where any suit hath been or shall be instituted in any court of equity for the payment of any debts of any person or persons deceased to which their heir or heirs devisee or devisees may be subject or liable and such court of equity shall decree the estates liable to such debts or any of them to be sold for satisfaction of such debt or debts and by reason of the infancy of any such heir or heirs devisee or devisees an immediate conveyance thereof cannot as the law at present stands be compelled in every such case such court shall direct and if necessary compel such infant or infants to convey such estate so to be sold (by all proper assurances in the law) to the purchaser or purchasers thereof and in such manner as the said court shall think proper and direct and every such infant shall make such conveyance accordingly and every such conveyance shall be as valid and effectual to all intents and purposes as if such person or persons being an infant or infants was or were at the time of executing the same of the full age of twenty-one years.

Persons having a life interest may convey the fee simple if the estate is ordered to be sold.

11 Geo. IV. & 1 Wm. IV. c. 47 s. 12.
1 Pring 477.

85. Where any lands tenements or hereditaments hath been or shall be devised in settlement by any person or persons whose estate under this Act or by law or by his or their will or wills shall be liable to payment of any of his or their debts and by such devise shall be vested in any person or persons for life or other limited interest with any remainder limitation or gift over which may not be vested or may be vested in some person or persons from whom a conveyance or other assurance of the same cannot be obtained or by way of executory devise and a decree shall be made for the sale thereof for the payment of such debts or any of them it shall be lawful for the court by whom such decree shall be made to direct any such tenant for life or other person having a limited interest or the first executory devisee thereof to convey release assign surrender or otherwise assure the fee simple or other the whole interest or interests so to be sold to the purchaser or purchasers or in such manner as the court shall think proper and every such conveyance release surrender assignment or other assurance shall be as effectual as if the person who shall make and execute the same were seized or possessed of the fee simple or other whole estate so to be sold.

Courts of equity authorised to direct mortgages as well as sales.

21 Vic. No. 6 s. 1.
1 Pring 478.
2 & 3 Vic. c. 60.

86. The two sections last preceding shall extend and the same are hereby extended to authorise courts of equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees as are referred to in the said section last but one preceding and also of lands tenements or hereditaments devised in settlement as mentioned in the said last preceding section and to authorise such sales and mortgages to be made in cases where the tenant for life or other person having a limited interest or the first executory devisee as hereinbefore referred to is an infant.

Surplus of money raised by sale or mortgage after defraying expenses to descend or devolve as the estate.

87. When any such sale or mortgage shall be made the surplus (if any) of the money raised by such sale or mortgage which shall remain after answering the purposes for which the same shall have been raised and defraying all legal costs and expenses shall be considered

considered in all respects of the same nature and descend or devolve in the same manner as the estate or the lands tenements or hereditaments so sold or mortgaged and shall belong to the same persons be subject to the same limitations and provisions and be applicable to the same purposes as such estate or such lands tenements or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

31 VICTORIE No. 24.
21 Vic. No. 6 s. 2.
1 Pring 478.
2 & 3 Vic. c. 60.

88. In cases in other respects falling within the provisions of the two sections last but two preceding the section last but two preceding shall extend and is hereby extended to any case in which any lands tenements or hereditaments of any deceased person shall by descent or otherwise than by devise be vested in the heir or co-heirs of such person subject to an executory devise over in favor of a person or persons not existing or not ascertained and in any such case it shall be lawful for the court by whom any decree shall be made as mentioned to direct such heir or co-heirs although an infant or infants to convey release assign surrender or otherwise assure the fee simple or other the whole interest to be sold to the purchaser or purchasers or as such court shall think proper and every such conveyance release assignment surrender or other assurance shall be as effectual as if the heir or co-heirs making and executing the same was or were seized or possessed of the fee simple or other whole interest and estate so to be sold and if an infant or infants was or were of full age.

Provisions extended to lands &c. of deceased debtor in certain cases.
21 Vic. No. 6 s. 3.
1 Pring 478.
11 & 12 Vic. c. 87.

Commencement and Short Title.

89. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Succession Act of 1867.*"

Commencement of Act.
Short title.

31 VICTORIA No. 9. **An Act to Consolidate and Amend the Laws relating to Probate.** [28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to probate Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

Interpretation of terms.

20 & 21 Vic. c. 77 s. 2.

1. In the construction of this Act unless the context be inconsistent with the meaning hereby assigned

“Will” shall comprehend “testament” and all other testamentary instruments of which probate may now be granted.

“Administration” shall comprehend all letters of administration of the effects of deceased persons whether with or without the will annexed and whether granted for general special or limited purposes.

“Matters and causes testamentary” shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration.

“Common form business” shall mean the business of obtaining probate and administration where there is no contention as to the right thereto including the passing of probates and administrations through the Supreme Court in contentious cases when the contest is terminated and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy not being proceedings in any suit and also the business of lodging and warning of caveats against the grant of probate or administration.

Imperial Probate Act Rules.

Property of Intestates.

How property to vest between death of person deceased and grant.

21 & 22 Vic. c. 95 s. 19.

2. From and after the decease of any person dying intestate and until letters of administration or an order to manage and collect shall be granted in respect of his estate and effects the personal estate and effects of such deceased person shall be vested in the Chief Justice of Queensland for the time being or in case there may not be a Chief Justice at any time then in the senior Puisne Judge of the Supreme Court for the time being in the same manner and to the same extent as aforetime they vested in the Ordinary in England.

Ecclesiastical Powers of the Court.

Power to examine witnesses.

20 & 21 Vic. c. 77 s. 24.

3. The Supreme Court may require the attendance of any party in person or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary and may examine or cause to be examined upon oath parties and witnesses by word of mouth and may either before or after or with or without such examination cause them or any of them to be examined on interrogatories or receive their or any of their affidavits and the court may by writ require such attendance and order to be produced before itself or otherwise any deeds evidences or writings in the same

same form or as nearly as may be as that in which a writ of *subpœna ad testificandum* or of *subpœna duces tecum* is now issued by the said Supreme Court and every person disobeying any such writ shall be considered as in contempt of the court and also be liable to forfeit a sum not exceeding one hundred pounds.

4. The Supreme Court shall have the like powers jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid and for punishing persons failing neglecting or refusing to produce deeds evidence or writings or refusing to appear or to be sworn or make affirmation or declaration or to give evidence or guilty of contempt and generally for the trial or determination of questions of fact and for enforcing all orders decrees and judgments made or given by the court under this Act and for the taxation of costs and otherwise in relation to the matters to be inquired into and done under this Act or by or under the orders of the court under this Act as are or shall be by law vested in the said court in equity for such purposes in relation to any suit or matter depending in such court in equity.

Powers of the court to enforce orders.
20 & 21 Vic. c. 77 s. 25.

5. The Supreme Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration order any person to produce and bring into the registry any paper or writing being or purporting to be testamentary which may be shown to be in the possession or under the control of such person and if it be not shown that any such paper or writing is in the possession or under the control of such person but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing the court may direct such person to attend for the purpose of being examined in open court or upon interrogatories respecting the same and such person shall be bound to answer such questions or interrogatories and if so ordered to produce and bring in such paper or writing and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the court and had made such default and the costs of any such motion petition or other proceeding shall be in the discretion of the court. All the powers and authorities hereinbefore given to the Supreme Court may be exercised by the said court in equity.

Order to produce any instrument purporting to be testamentary.
20 & 21 Vic. c. 77 s. 26.

6. It shall be lawful for the said court to make all such orders as may be necessary for the due administration of the assets of any such estate to all persons entitled thereunto and also for the payment out of such assets to the persons administering the same of any costs charges and expenses which may have been lawfully incurred by them and also such commission or per centage as shall be just and reasonable for their pains and trouble therein and if any such executor or administrator shall neglect to pass his accounts or to pay deposit or dispose of the goods chattels and credits belonging to the estate of any deceased person at the time and in the manner directed it shall be lawful for the said court on the application of any person aggrieved by such neglect to order and direct that such executor or administrator shall pay interest at a rate not exceeding eight pounds per centum per annum for such sums of money as from time to time shall have been in his hands and the costs occasioned by the application.

Court may make order for administration of effects of deceased person.
25 Vic. No. 13 s. 25.
2 Pring 1599.

Procedure.

31 VICTORIA No. 9.

Procedure.

Mode of taking evidence in contentious matters.

20 & 21 Vic. c. 77 s. 31.

7. Subject to the regulations to be established by such rules and orders as hereinafter mentioned the witnesses and where necessary the parties in all contentious matters where their attendance can be had shall be examined orally by or before the judge in open court. Provided always that subject to any such regulations as aforesaid the parties shall be at liberty to verify their respective cases in whole or in part by affidavit but so that the deponent in every such affidavit shall on the application of the opposite party be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Practice.

Practice of the court.

20 & 21 Vic. c. 77 s. 29.

8. The practice under this Act of the Supreme Court shall except where otherwise provided by this Act or by the rules or orders to be from time to time made under this Act be so far as the circumstances of the case will admit according to the practice of the Court of Probate in England.

Chamber Practice.

The judge may sit in chambers.

21 & 22 Vic. c. 95 s. 3.

9. It shall be lawful for the Judge in Equity or some other Judge of the Supreme Court to hear in chambers such part of the business of the said court under this Act as can in the opinion of such Judge with advantage to the suitors be heard in chambers. Provided always that no question shall be heard in chambers which either party shall require to be heard in open court.

Powers of judge

sitting in chambers.

21 & 22 Vic. c. 95 s. 5.

10. Such judge as aforesaid when so sitting in chambers shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

Registrar.

Registrar may issue subpoenas to produce papers &c.

21 & 22 Vic. c. 95 s. 23.

11. It shall be lawful for the registrar of the Supreme Court and whether any suit or other proceeding shall or shall not be pending in the said court to issue a subpoena in the usual form requiring any person to produce and bring into the registry of the Supreme Court as in the said subpoena may be directed any paper or writing being or purporting to be testamentary which may be shown to be in the possession within the power or under the control of such person and such person upon being duly served with the said subpoena shall be bound to produce and bring in such paper or writing and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said court and had been ordered by the Chief Justice or such other judge as aforesaid to produce and bring in such paper or writing.

The registrar to do all acts heretofore done by surrogates.

21 & 22 Vic. c. 95 s. 24.

12. The said registrar shall be invested with and shall and may exercise with reference to proceedings in the Supreme Court under this Act the same power and authority which surrogates of the prerogative court of Canterbury could or might before the passing of the Imperial Court of Probate Act have exercised in chambers with reference to proceedings in the said prerogative court and provided such registrar be authorised in that behalf by such general rules and orders as hereinafter mentioned non-contentious business may be transacted and probate of a will or letters of administration may upon application for that purpose

be issued in the usual form by such registrar in conformity with such rules and orders and the duties therein imposed on him. 31 VICTORIA No. 9.

13. The said registrar shall cause to be made from time to time in the registry of the Supreme Court calendars of the grants of probate and administration in the registry for such periods as the general rules and orders hereinafter mentioned may provide each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified and also a note of every other administration granted within the same period such respective notes setting forth the dates of such grants the witnesses on whose evidence depositions or affidavits the grants were made the names of the testators and intestates the place and time of death the names and descriptions of the executors and administrators and bondsmen and the value of the effects and the calendars to be so made shall be printed as the same are from time to time completed in the *Gazette* or otherwise as provided by such rules and orders. Judge to cause calendars to be made from time to time in the registry and to be printed. 20 & 21 Vic. c. 77 s. 67.

Official Copies.

14. An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the registry where the will has been proved or the administration granted on the payment of such fees as shall be fixed for the same by the rules and orders under this Act. Official copy of whole or part of will may be obtained. 20 & 21 Vic. c. 77 s. 69.

Taxation.

15. The bill of any proctor attorney or solicitor for any fees charges or disbursements in respect of any business transacted in the Supreme Court under this Act whether contentious or otherwise or any matters connected therewith shall as well between proctor or attorney or solicitor and client as between party and party be subject to taxation by the taxing officer of the Supreme Court. Taxation of costs. 20 & 21 Vic. c. 77 s. 96.

Oaths.

16. The registrar and commissioners of the Supreme Court shall have power to administer oaths under this Act. Oaths.

Renunciation or Neglect of Executor.

17. Where any person after the commencement of this Act renounces probate of the will of which he is appointed executor or one of the executors the rights of such person in respect of the executorship shall wholly cease and the representation to the testator and the administration of his effects shall and may without any further renunciation go devolve and be committed in like manner as if such person had not been appointed executor. Rights of an executor renouncing probate to cease. 21 & 22 Vic. c. 77 s. 79.

18. Whenever an executor appointed in a will survives the testator but dies without having taken probate and whenever an executor named in a will is cited to take probate and does not appear to such citation the right of such person in respect of the executorship shall wholly cease and the representation to the testator and the administration of his effects shall and may without any further renunciation go devolve and be committed in like manner as if such person had not been appointed executor. An executor not acting or not appearing to a citation to be treated, as if he had renounced. 21 & 22 Vic. c. 95 s. 16.

Probate in Solemn Form.

19. Where proceedings are taken under this Act for proving a will in solemn form or for revoking the probate of a will on the ground Where a will affecting real estate is proved in solemn form &c.

31 VICTORIA No 9. of the invalidity thereof or where in any other contentious cause or matter under this Act the validity of a will is disputed unless in the several cases aforesaid the will affects only personal estate the heir-at-law devisees and other persons having or pretending interest in the real estate affected by the will shall subject to the provisions of this Act and to the general rules and orders under this Act be cited to see proceedings or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned and may be permitted to become parties or intervene for their respective interests in such real estate subject to such rules and orders and to the discretion of the court.

Where the will is proved in solemn form or its validity otherwise decided on the decree of the court to be binding on the persons interested in the real estate.
20 & 21 Vic. c. 77 s. 61.

20. Where probate of such will is granted after such proof in solemn form or where the validity of the will is otherwise declared by the decree or order in such contentions cause or matter as aforesaid the probate decree or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will and the probate copy of such will or the letters of administration with such will annexed or a copy thereof respectively stamped with the seal of Her Majesty's Supreme Court shall in all courts and in all suits and proceedings affecting real estate of whatever tenure (save proceedings by way of appeal under this Act or for the revocation of such probate or administration) be received as conclusive evidence of the validity and contents of such will in like manner as a probate is received in evidence in matters relating to the personal estate and where probate is refused or revoked on the ground of the invalidity of the will or the invalidity of the will is otherwise declared by decree or order under this Act such decree or order shall enure for the benefit of the heir-at-law or other person against whose interest in real estate such will might operate and such will shall not be received in evidence in any suit or proceeding in relation to real estate save in any proceeding by way of appeal from such decrees or orders.

Heir in certain cases not to be cited and where not cited not to be affected by probate.
20 & 21 Vic. c. 77 s. 63.

21. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seized of or entitled to or had power to appoint by will some real estate beneficially or in any case where the will propounded or of which the validity is questioned would not in the opinion of the court though established as to personalty affect real estate but in every such case and in any other case in which the court may with reference to the circumstances of the property of the deceased or otherwise think fit the court may proceed without citing the heir or other persons interested in the real estate provided that the probate decree or order of the court shall not in any case affect the heir or person in respect of his interest in real estate unless such heir or person has been cited or made party to the proceedings or derives title under or through a person so cited or made party.

Executors out of the Jurisdiction.

When executor shall not reside within the jurisdiction special administration may be granted for which a five shilling stamp duty shall be paid.
38 G. III. c. 87 s. 1.

22. At the expiration of twelve calendar months from the death of any testator if the executors or executor to whom probate of the will shall have been granted by the Supreme Court are or is then residing out of the jurisdiction of the said Supreme Court it shall be lawful for the said court upon the application of any creditor next of kin or legatee grounded on the affidavit

affidavit hereinafter mentioned to grant such special administration as 31 VICTORIA No. 9. hereinafter is also mentioned which administration shall be written or printed upon paper or parchment stamped only with one five shilling stamp and shall pay no further or other duty to Her Majesty Her Heirs or Successors.

23. The party applying to the Supreme Court to grant such administration as aforesaid shall make an affidavit in the following words or to the purport and effect following—

The party applying to make the following affidavit.
38 G. III. c. 87 s. 2.

“I [A B] of [C D] in the kingdom [or colony or other place] of [Q] [farmer] do swear that there is due and owing to me upon bond or simple contract or upon account unsettled [as the case may happen to be (in which latter case he shall swear to the best of his belief only)] from the estate and effects of deceased the sum of and that E F the only executor capable of acting and to whom probate hath been granted hath departed this colony and is now out of the jurisdiction of Her Majesty's said Supreme Court and that I am desirous of exhibiting a bill in equity in Her Majesty's said Supreme Court for the purpose of being paid my demand out of the assets of the said testator.”

24. The administration to be granted pursuant to this Act shall be in the form hereinafter mentioned (that is to say)—

Administration to be granted in the following form.

“Victoria [&c.] to [A B] of [C D] in the kingdom [or colony or other place] of [Q] greeting.

38 G. III. c. 87 s. 3.

“Whereas it hath been alleged before us in our Supreme Court of Queensland that did whilst living and of sound mind memory and understanding make and duly execute his last will and testament in writing duly attested and did thereby duly nominate constitute and appoint his executors [or sole executor] who in the month of proved the said will by the authority of our said court and now reside [or resides] out of the jurisdiction of our said court and are [or is] the only executors [or executor] capable of acting and that there is due and owing to you the said upon bond [or simple contract or as the case may happen to be] from the estate and effects of the said deceased the sum of as in and by the affidavit [or affidavits] of [or of and and] duly made and sworn to and left in the registry of our said court reference being thereunto had will more fully and at large appear and whereas on your petition presented by G. H. lawfully constituted by you the said your solicitor [or on the motion of Mr. I. J. of counsel for you the said] and on the said affidavits letters of administration of all and singular the goods chattels and credits of the said deceased were [decreed and ordered if so] [in our said court or as the case may be] to be committed and granted to you the said a creditor [or legatee or one of the next of kin as the case may be] of the said deceased limited for the purpose to become and be made a party to a bill or bills to be exhibited by or against you in our said court in equity and to carry the decree or decrees of our said court into effect but no further or otherwise (justice so requiring) and we being desirous that the said goods chattels and credits may be well and faithfully administered applied and disposed of according to law do therefore by these presents grant full power and authority to you in whose fidelity we confide to administer and faithfully dispose of the said goods chattels and credits according to the tenor and effect of the said will limited as aforesaid so far as such goods chattels and credits of the deceased will thereto extend and the law requires you having been already sworn well and faithfully to administer the same and to make a true and perfect inventory of all and singular the said goods chattels and credits so far as the same may come to your hands and to exhibit the same into the registry of our said court on or before the next ensuing and also to render a just and true account thereof and we do by these presents ordain and constitute you administrator of all and singular the goods chattels and credits of the said deceased limited as aforesaid but no further or otherwise.

“Witness the honorable [name] our Chief Justice &c.”

Or

31 VICTORIA No. 9. Or in such form as may be prescribed in any such general rules and orders as hereinafter mentioned or to the like effect.

Provisions of 38 Geo.
III. c. 87 and 20 & 21
Vic. c. 77 extended.
21 & 22 Vic. c. 95
s. 18.

25. The provisions of this Act shall be extended to all executors and administrators residing out of the jurisdiction of Her Majesty's Supreme Court whether it be or be not intended to institute proceedings in equity and to all grants made before and subsequently to the passing of this Act and it shall be lawful to alter the language of the grant prescribed by the section last preceding or to be prescribed in such general rules and orders as hereinafter mentioned so as to make it apply to grants made in any particular case.

Court may appoint
persons to collect out-
standing debts.
38 Geo. III. c. 87
s. 4.

26. It shall be lawful for the Supreme Court in equity in which such suit shall be depending to appoint (if it shall be needful) any persons or person to collect in any outstanding debts or effects due to such estate and to give discharges for the same to such persons or person giving security in the usual manner duly to account for the same.

Stock belonging to the
estate of the deceased
may be transferred
into the name of the
accountant-general in
equity in trust for
such purposes as the
court shall direct in
any suit.

38 Geo. III. c. 87
s. 5.

Executors returning
to reside within the
jurisdiction of the
court to be made a
party to such suit.

27. It shall be lawful for the accountant-general in equity or for the proper officer in that behalf to transfer or suffer a transfer to be made of any stock belonging to the estate of such deceased person into the name of the accountant-general in equity or such proper officer in trust for such purposes as the said court shall direct in any suit in which the person to whom such administration hath been granted shall be or may have been a party. Provided nevertheless that if the executors or executor capable of acting as such shall return to and reside within the jurisdiction of the said Supreme Court pending such suit such executors or executor shall be made party to such suit and the costs incurred by granting such administration and by proceeding in such suit against such administrator shall be paid by such person or persons or out of such fund as the said court shall direct.

Where an infant is
sole executor admini-
stration to be granted
to the guardian &c.
38 Geo. III. c. 87
s. 6.

28. Where an infant is sole executor administration with the will annexed shall be granted to the guardian of such infant or to such other person as the said court shall think fit until such infant shall have attained the full age of twenty-one years at which period and not before probate of the will shall be granted to him.

Who shall have the
same power as where
administration is
granted *durante*
minore ætate of the
next of kin.
38 Geo. III. c. 87
s. 7.

29. The person to whom such administration shall be granted shall have the same powers vested in him as an administrator by virtue of an administration granted to him *durante minore ætate* of the next of kin.

Interim and Exceptional Administrator.

Administration *pen-
dente lite*.
20 & 21 Vic. c. 77 s. 70.

30. Pending any suit touching the validity of the will of any deceased person or for obtaining recalling or revoking any probate or any grant of administration the Supreme Court may appoint an administrator of the personal estate of such deceased person and the administrator so appointed shall have all the rights and powers of a general administrator other than the right of distributing the residue of such personal estate and every such administrator shall be subject to the immediate control of the court and act under its direction.

Remuneration to ad-
ministrators *pendente*
lite.
20 & 21 Vic. c. 77 s. 72.

31. The Supreme Court may direct that administrators and receivers appointed pending suits involving matters and causes testametary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

32. Where a person has died or shall die wholly intestate as to his personal estate or leaving a will affecting personal estate but without having appointed an executor thereof willing and competent to take probate or where the executor shall at the time of the death of such person be resident out of the Colony of Queensland and it shall appear to the court to be necessary or convenient in any such case by reason of the insolvency of the estate of the deceased or other special circumstances to appoint some person to be the administrator of the personal estate of the deceased or of any part of such personal estate other than the person who if this Act had not been passed would by law have been entitled to a grant of administration of such personal estate it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this Act had not passed would by law have been entitled to a grant thereof but it shall be lawful for the court in its discretion to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct and every such administration may be limited as the court shall think fit.

31 VICTORIA No. 9.
Power as to appointment of administrator.
20 & 21 Vic. c. 77 s. 73.

Interim Receiver.

33. It shall be lawful for the Supreme Court to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected and such receiver shall have such power to receive all rents and profits of such real estate and such powers of letting and managing such real estate as the court may direct.

Receiver of real estate *pendente lite*.
20 & 21 Vic. c. 77 s. 71.

34. It shall be lawful for the Supreme Court to require security by bond in such form as by any rules and orders shall from time to time be directed with or without sureties from any receiver of the real estate of any deceased person appointed by the said court under the next preceding section of this Act and the court may on application made on motion or in a summary way order the registrar of the court to assign the same to some person to be named in such order and such person his executors or administrators shall thereupon be entitled to sue on the said security or put the same in force in his or their name or names both at law and in equity as if the same had been originally given to him instead of to the Chief Justice or senior Puisne Judge of the said court and shall be entitled to recover thereon as trustee for all persons interested in the full amount due in virtue thereof.

The court of probate may require security from a receiver of real estate.
21 & 22 Vic. c. 95 s. 21.

Administration.

35. After any grant of administration no person shall have power to sue or prosecute any suit or otherwise act as executor of the deceased as to the personal estate comprised in or affected by such grant of administration until such administration shall have been recalled or revoked.

After grant of administration no person to act as executor.
20 & 21 Vic. c. 77 s. 75.

Securities.

36. Every person to whom any grant of administration shall be committed shall give bond to the Chief Justice or to such senior Puisne Judge to enure for the benefit of the Chief Justice or such Judge and if such rules and orders as hereinafter mentioned shall require with one or more surety or sureties conditioned for duly collecting getting in and administering the personal estate of the deceased which bond shall be in such

Persons to whom grant of administration shall be committed shall give bond.
20 & 21 Vic. c. 77 s. 81.

31 VICTORIA No. 9. such form as the court or a Judge shall from time to time by any general or special order direct.

Penalty on bond.

20 & 21 Vic. c. 77 s. 82.

37. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn unless the court shall in any case think fit to direct the same to be reduced in which case it shall be lawful for the court so to do and the court may also direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the court shall think reasonable.

Power of court to assign bond.

20 & 21 Vic. c. 77 s. 83.

38. The court may on application made on motion or petition in a summary way and on being satisfied that the condition of any such bond has been broken order the registrar of the Supreme Court to assign the same to some person to be named in such order and such person his executors or administrators shall thereupon be entitled to sue on the said bond in his own name both at law and in equity as if the same had been originally given to him instead of to the Chief Justice or such Judge as aforesaid and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

Indemnities.

Payments under revoked probates or administration to be valid.

20 & 21 Vic. c. 77 s. 77.

39. Where any probate or administration is revoked under this Act all payments *bonâ fide* made to any executor or administrator such probate or administration before the revocation thereof shall be a legal discharge to the person making the same and the executor and administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

Indemnity to persons &c. making payment upon probates.

20 & 21 Vic. c. 77 s. 78.

40. All persons and corporations making or permitting to be made any payment or transfer *bonâ fide* upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act shall be indemnified and protected in so doing notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

Fees.

Fees on probates &c. 15 Vic. No. 17 s. 3. 2 Pring 1592.

41. The fees payable in the said court on probates and letters of administration shall be those mentioned in the schedule hereunder written and no other fees in respect of any probate or administration shall be payable either for filing petition and affidavits taking the bond administering the oath or oaths making the order granting the probate or administration or otherwise. But nothing in this section contained shall apply to affidavits in contentious cases after contest commenced.

SCHEDULE.

15 Vic. No. 17 schedule. 2 Pring 1592.

Where the effects are under £30 no fee

	Probate. s. d.	Administration. s. d.
£30 but under £50	7 6	10 0
50 " 100	10 0	15 0
100 " 200	15 0	20 0
200 " 500	20 0	30 0
Above £500	30 0	40 0

General Rules and Orders.

General rules may be made by the judges.

42. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make

make all such general rules and orders for the effectual execution of this Act 31 VICTORIA No. 9.
 and of the intention and object hereof and for fixing the costs to be allowed for
 and in respect of the matters herein contained and the performance thereof 17 Vic. No. 21 s. 171.
 and for apportioning the costs of issues and also for altering the number of 2 Pring 1638.
 days by this Act limited for the return of any writ or for the doing of 15 & 16 Vic. c. 76
 anything by this Act prescribed or authorised to be done and substituting s. 223.
 other days for the same as in their judgment shall be necessary or proper and 27 Vic. No. 11 s. 20.
 to make rules and orders to take effect when this Act shall come into opera- 3 Pring 316.
 tion for regulating the procedure and practice of the court and the duties of
 the registrar and other officers in respect thereof and for determining what
 shall be deemed contentious and what shall be deemed non-contentious
 business and generally for carrying the provisions of this Act into effect
 And after the term when this Act shall come into effect it shall be lawful
 for the said judges or such majority of them as aforesaid to repeal amend
 add to or alter any such rules and orders as may seem fit Provided that
 nothing herein contained shall be construed to restrain the authority or
 limit the jurisdiction of the said court or the judges thereof to make rules
 or orders or otherwise to regulate and dispose of the business therein.

Rules and orders for
 regulating the proceed-
 ure of the Court.
 20 & 21 Vic. c. 77
 s. 3.

43. Such new or altered writs citations and forms of proceedings may
 be issued entered and taken as may by the judges of the Supreme Court or a
 majority of them of whom the Chief Justice shall be one be deemed
 necessary or expedient for giving effect to the provisions hereinbefore
 contained and in such forms as the judges of such court or majority of
 them shall from time to time think fit to order and such writs citations and
 proceedings shall be acted upon and enforced in such and the same manner
 as writs citations and proceedings of the said court are now acted upon and
 enforced or as near thereto as the circumstances of the case will admit and
 any existing writ or proceeding the form of which shall be in any manner
 altered in pursuance of this Act shall nevertheless be of the same force
 and virtue as if no alteration had been made therein except as far as the
 effect thereof may be varied by this Act.

New forms of writ
 and other proceed-
 ings.
 23 & 24 Vic. c. 126
 s. 38.
 27 Vic. No. 14 s. 20.
 3 Pring 316.

Commencement and Short Title.

44. This Act shall commence on the thirty-first day of December
 one thousand eight hundred and sixty-seven and may be referred to as
 the "*Probate Act of 1867.*"

Commencement of
 Act.
 Short title.

31 VICTORIA No. 10. **An Act to Consolidate and Amend the Laws relating to the Curator of Intestate Estates.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to the curator of intestate estates Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Curator of Intestate Estates.

Curator of intestate estates.
25 Vic. No. 13 s. 27.
2 Pring 1599.

1. It shall be lawful for the Governor in Council to appoint some fit person at Brisbane to be curator of intestate estates as also of other property exposed or liable to waste left by persons who shall die leaving property within the colony.

Responsibilities of curator.
25 Vic. No. 13 s. 29.
2 Pring 1599.

2. Such curator shall in all matters connected with the duties of his office be deemed an officer of the Supreme Court and be subject to the rules and orders of the court accordingly and shall before entering on such duties give such security by bond with two sureties to Her Majesty for the due performance of those duties and that he will duly account for and pay into the court or to the parties entitled thereto all property and moneys coming to his hands as the Governor in Council shall direct and the said curator shall file on the first day of every month in the office of the said court an account of all moneys received by him in his official capacity.

Curator to give security.
11 Vic. No. 24 s. 1.
1 Pring 727.

3. The curator of intestate estates shall from time to time procure and give security by bond or recognizance to Her Majesty the Queen and Her Successors in the sum of two thousand pounds by himself and such sureties as the Governor in Council may think fit conditioned for the collection and due payment of and accounting for all moneys which shall come to his hands by virtue of his office of curator of intestate estates Provided always that no surety for such officer shall be liable beyond the separate amount in which he may have bound himself and also that every such surety may withdraw from any further liability for the future under any such bond or recognizance by giving to Her Majesty's Attorney-General for Queensland three months' notice in writing of his intended withdrawal without prejudice nevertheless to his liability for any previous breach of the condition of such bond or recognizance.

Liability of sureties.

Suits by or against curator.
11 Vic. No. 24 s. 8.
1 Pring 730.

4. In all proceedings under this Act and in all proceedings at law or in equity the said officer shall sue and be sued by his name with the addition of the words "curator of intestate estates" and it shall not be necessary for him or the person or persons suing him to state or prove his general authority to collect manage and administer the estates of the deceased persons leaving property within the provisions of this Act but merely the order made on the petition of the said curator for such purposes in the specific estate to which the proceedings may relate and whenever the office of curator of intestate

intestate estates shall become vacant by the death or removal of the officer appointed for the time being to collect manage and administer the estates of deceased persons and another officer shall be appointed to that office during the pendency of any petition action suit or other proceeding such petition action suit or proceeding shall not abate or become defective but the petition action suit or other proceeding shall be continued by or against the officer newly appointed and his name be used in all future proceedings in lieu of the name of the officer so deceased or removed.

Curator's Agents and his and their Remuneration.

5. The clerks to the several benches of magistrates within the Colony of Queensland shall at the request of the curator of intestate estates act as his agents in the collecting and getting in of all property within their districts respectively belonging to deceased persons whose estates shall have been duly ordered to be collected and where any such property shall be situate in any part of the colony to which there shall have been no such clerk appointed the curator of intestate estates shall appoint as his agent to collect and get in the property of the deceased such person as he shall think fit and such clerks and agents shall collect all such property and convert the same (if so directed) into money and remit the proceeds or pay debts due by the deceased person out of the same and otherwise act in the premises under the direction of the curator of intestate estates who shall not be answerable for any act or omission of any such clerk or agent not in conformity with any such direction or which shall not have happened by the said curator's own default or neglect.

6. The curator of intestate estates shall take retain and receive the fees set out in the schedule hereunto annexed and also a commission at the rate of five pounds per centum on all sums of money which shall be collected by him whether personally or by any clerk or agent as aforesaid Provided that in respect of all sums of money which shall be collected or come to the hands of any clerk to a bench of magistrates or other agent employed by the said curator he shall make an allowance at the rate of three pounds per centum to such clerk or agent out of such commission as a remuneration for his services Provided also that such curator shall pay such fees (but not such commission) into the Colonial Treasury.

SCHEDULE.

	£	s.	d.	
For every order to collect where effects shall appear to be above fifty pounds	0	7	6	11 Vic. No. 21. 1 Pring 733.
Where effects shall appear to be fifty pounds or under	0	5	0	
For every order to pay money if ten pounds and under twenty pounds	0	2	6	
If twenty pounds and under fifty pounds	0	5	0	
If fifty pounds and under one hundred pounds	0	10	0	
And on every one hundred pounds above the first	0	2	6	
For every common order	0	2	6	
For every special order	0	5	0	
For every office copy three-pence per folio				
On every audit of accounts including the direction to invest assets if the amount which shall have been in the curator's hands be under twenty pounds	0	5	0	
If twenty pounds and under fifty pounds	0	7	6	
If fifty pounds and under one hundred pounds	0	10	0	
For every one hundred pounds above the first	0	2	6	

31 VICTORIE No. 10.

Curator may with
consent of a judge
depute an official as-
signee in insolvency
as collector &c.

15 Vic. No. 8 s. 5.
1 Pring 734.

7. It shall be lawful for the curator at any time or times hereafter with the consent in writing of one of the judges to depute the actual collection of any estate or estates and the goods debts and moneys therein to one of the official assignees in insolvency and thereafter every assignee so deputed in respect of every estate committed to him under this section shall be deemed an agent of the curator within the meaning of this Act and shall be bound to account from time to time to him as and when such curator (or as the Supreme Court or any judge thereof) shall from time to time require and shall pay over all balances in his hands to the curator monthly or oftener if so required and shall be entitled to retain to his own use out of the property realised and moneys collected by him a commission of not less than three nor more than five per centum as one of the judges may in each case appoint as a remuneration for his services therein.

Certain expenses
incurred in intestate
estates.

17 Vic. No. 17 s. 6.
1 Pring 736.

8. It shall be lawful for the curator of intestate estates out of the fees and commission receivable on collections of intestate estates with the approval of one of the judges to defray any expense reasonably incurred in the collection or administration of any intestate estates or estate and which there shall appear to be no other available source for defraying.

Powers and emolu-
ments of such officer.
25 Vic. No. 13 s. 28.
2 Pring 1599.

9. The person so appointed shall as such curator in respect of the estates and property belonging to persons so dying which he shall be directed or empowered to collect be entitled to the commission by law payable to an official assignee discharging those duties and the several clerks of the bench in the colony shall be his agents for the collection of all such estates and property.

Immunities.

Curator or his agents
not liable for acts
done in the perform-
ance of their duties.

15 Vic. No. 8 s. 6.
1 Pring 735.

10. Neither the curator of intestate estates nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession of any intestate at the time of his death which shall be sold by the curator or any such agent as the goods of such intestate unless such curator or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of such intestate and generally neither the curator nor any of his agents shall be liable for any act done by him or them *bonâ fide* in the supposed and intended performance of their duties respectively unless it shall be shown that such act was done not only illegally but wilfully or with gross negligence. Provided always that in case of any sale by the curator or his agents of goods or chattels belonging in fact to any third person the amount realized by such sale thereof shall be paid over by him or them to the owner upon proof by him of such ownership unless the same shall have been applied in the payment of the debts of the deceased or shall have been distributed according to any will of the deceased or in the ordinary course of administration whilst the said curator or any such agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

Curator's Duties and Rights.

Order to collect.
11 Vic. No. 24 s. 2.
1 Pring 728.

11. The curator of intestate estates shall from time to time so soon as conveniently may be after receiving information on oath of the death of any person leaving any personal estate liable to be collected

collected by him apply to the Supreme Court or one of the judges thereof for an order authorising him to collect manage and administer such estate and the said court or judge shall if satisfied that the case is within the provisions of this Act make such order which order when made shall give to the curator of intestate estates the same power over the personal estate of the deceased person except as hereby enacted as he would have had if letters of administration of such personal estate had been granted to the said officer subject nevertheless to any order or orders which may from time to time be made by the said court or one of the judges thereof on petition as hereinafter mentioned touching the said estate or the collection management or administration thereof. Provided nevertheless that an order to collect manage and administer any estate shall not either before or after the same shall be made prevent the proving of any will or the obtaining of any letters of administration to the personal estate of any person dying intestate or limit or affect the powers or duties of any executor or administrator of the same estate. The curator of intestate estates shall apply for an order to collect manage and administer the estate of any deceased person whenever such person shall have died beyond the jurisdiction of the said court but leaving personal property within the jurisdiction thereof which would be held to be within the provisions of this Act if such person had died within the jurisdiction of the said court and the said court or judge thereof shall have authority to make such order.

31 VICTORIA No. 10.

Right of executor or administrator.

Persons dying beyond the jurisdiction of the court.

11 Vic. No. 24 s. 5.

1 Pring 729.

12. When any person shall have died having made a will and named executors or an executor thereof bequeathing personal property within the jurisdiction of the said court and probate thereof or letters of administration with the will annexed shall not have been obtained within six calendar months after the death of the testator the curator of intestate estates upon information on oath being given to him of the said fact shall cite the executors named in the said will to come in and prove the same or show cause within fourteen days after such citation why an order should not be made for the said officer to collect manage and administer the said estate and such citation shall be by notice under the hand of the curator of intestate estates which notice shall (with respect to such of the said executors as shall have a place of residence within this colony known to the said curator) be served personally or by delivery at such residence and (with respect to such of them as may be out of the colony or have no known place of residence within it) shall be twice inserted in the *Gazette* and if at the expiration of the said fourteen days the said will shall not be proved or cause shown to the satisfaction of the said court or a judge thereof why the order should not be made such order shall upon the petition of the said officer be made accordingly.

Cases where no probate within six months.

11 Vic. No. 24 s. 6.

1 Pring 729.

13. When any person shall have died intestate (or if he shall have made a will without naming any executor thereof) leaving personal property within the jurisdiction of the said Supreme Court and letters of administration shall not have been obtained within three calendar months after the death of such deceased person the curator of intestate estates upon information on oath being given to him of the said facts shall cite in manner aforesaid the widow and next of

The like where no executor or no will.

11 Vic. No. 24 s. 7.

1 Pring 730.

31 VICTORIE No. 10. kin who may be entitled to administer to apply for and obtain letters of administration or show cause within one calendar month after such citation why an order should not be made for the said officer to collect manage and administer the said estate and if at the expiration of the said one calendar month letters of administration shall not have been obtained or cause shown to the court or a judge thereof why such order should not be made such order upon the petition of the said officer shall be made.

Cases where the goods will probably be purloined or destroyed.

15 Vic. No. 8 s. 1.
1 Pring 734.

14. The curator of intestate estates shall apply for and may at any time after the death of any deceased person and without previous citation obtain an order to collect manage and administer the estate of such person in any of the cases mentioned respectively in the two sections last preceding where the Supreme Court or the judge applied to for such order shall be satisfied by affidavit that the effects of the deceased will otherwise be probably purloined lost or destroyed or that great expense will be incurred by delay in the matter.

Cases where no probate or letters will probably be obtained.

15 Vic. No. 8 s. 2.
1 Pring 734.

15. The like order shall or may be applied for and may be obtained in any of the said cases (after due citation as mentioned in the said sections respectively and after the expiration of thirty days after the death of the deceased person) where the said court or the judge applied to shall be satisfied by affidavit that there is no reasonable probability of probate or letters of administration being obtained within the aforesaid periods of six months or three months (as the case may be) after the death of such deceased person.

Cases of renunciation.

15 Vic. No. 8 s. 3.
1 Pring 734.

16. Whenever the curator of intestate estates shall have received information on oath that any person has died either having made a will or intestate and that the several persons named as executors have renounced probate of such will or that all the persons primarily entitled to letters of administration have by a memorandum or declaration in writing filed in the office of the registrar of the Supreme Court declined to take out such letters the said curator shall apply for an order to collect manage and administer the estate of such deceased person and the Supreme Court or any judge thereof shall or may thereupon without citation and at any time after the death of the deceased person if satisfied of those facts make such order accordingly.

Curator to act as the court or a judge shall direct.

15 Vic. No. 8 s. 4.
1 Pring 734.

17. In all cases where an order to collect shall have been made or shall be made under this Act it shall be lawful for the court or any judge thereof on the petition of the curator or any person interested in the estate to make such order or orders from time to time touching the collection sale investment and disposal of the estate as to such court or judge shall seem meet.

Mode of proceeding under this Act.

11 Vic. No. 24 s. 3.
1 Pring 729.

18. After an order to collect manage and administer the estates of deceased persons shall have been made all disputes and matters touching the collection management or administration of the same within the provisions of this Act and all claims and demands thereon except as hereinafter provided shall be decided by the said Supreme Court or one of the judges thereof on petition in like manner as if the matter were in the equitable jurisdiction of the said court and the judges of the said court shall from time to time make such general rules and orders touching such petitions and the proceedings thereon as to them shall seem expedient and all petitions and orders presented

presented and made under the provisions of this Act and all affidavits 31 VICTORIA No. 10.
used in support of or in opposition to such petitions or otherwise
relating to the estates of such deceased persons as aforesaid and all
accounts of the collection of intestates' estates passed or to be passed
shall be filed in such office of the Supreme Court as the said judges
shall from time to time direct. Provided nevertheless that if the said
Supreme Court or the judge to whom any petition shall be presented
touching the matters aforesaid shall think it desirable that the matter
in question should not be decided on petition the said court or judge
shall order such proceedings to be instituted at law or in equity as
shall be considered proper for the decision thereof.

19. All orders which shall be made by the said court or a judge
thereof shall be enforced by the same process as the like orders would
be enforced by if they were made by the said Supreme Court in its
equitable jurisdiction and all affidavits made in respect of the
collection management or administration of the estates of deceased
persons under the provisions of this Act or relating thereto or to any
proceedings at law or in equity under the provisions of this Act or
relating thereto may be sworn before a commissioner of the Supreme
Court for taking affidavits or (in places beyond the distance of thirty
miles from a commissioner) before any justice of the peace who is
hereby empowered to administer the same.

Curator's Vouchers and Accounts.

20. The curator of intestate estates shall make or cause to be
made an inventory or list of all the personal estate of the persons
whose estates he shall have been ordered to collect manage and
administer and shall retain the same in his office and shall keep an
account of all his receipts payments and dealings in every such estate
and shall retain all letters received and copies of all letters written by
him and all deeds papers and writings of and relating to such estates
and shall permit all persons to inspect and take copies of the same
and of all proceedings relating thereto at all reasonable hours or shall
furnish office copies thereof on payment of the fees mentioned in the
schedule hereto annexed and shall convert into money all such
personal estate as shall not consist of money unless order be made
to the contrary by the said court or a judge thereof.

21. The curator of intestate estates shall once in each
term or oftener if required by the Supreme Court pass his
accounts in each estate before the said court but the passing of
such accounts shall not prevent his being thereafter liable to any
claim which may be at any time made on him in respect of any sum
received and not accounted for or any sum which might have been
received by him but for his wilful neglect or default and the curator
of intestate estates shall in every year in the month of January
transmit to Her Majesty's principal Secretary of State for the Colonies
a return of all moneys paid received and invested in the savings bank
in respect of all the estates of deceased persons entrusted to him for
collection during the preceding year distinguishing the particular
estate in which the same have been so received paid or invested and
he shall also publish twice in every year in the months of January
and July a like return in the *Gazette* in respect of the six months
preceding.

Creditors

Enforcing orders.
11 Vic. No. 24 s. 4.
1 Pring 729.

Accounts to be kept.
11 Vic. No. 24 s. 9.
1 Pring 730.

And personal estate
realised.

Passing curator's ac-
counts.
11 Vic. No. 24 s. 13.
1 Pring 731.

31 VICTORIA No. 10.

Creditors Legatees and Parties in Distribution.

Payment of debts.

11 Vic. No. 24 s. 10.
1 Pring 731.

22. The curator of intestate estates shall at such times as he shall think fit cause advertisements to be inserted in the *Gazette* and such other public papers as he shall deem expedient calling upon the creditors of the persons whose estates he shall have been ordered to collect manage and administer to come in and prove their debts before him and the said curator of intestate estates shall allow any claim which may be made before him if the same shall amount to the sum of twenty pounds or upwards upon the like proof as would be required by the master in equity for proof of a claim made before him upon a reference to take an account of debts in a suit instituted by a creditor on behalf of himself and others against an executor or administrator and shall allow any claim not amounting to the sum of twenty pounds upon the affidavit of the claimant alone or where he shall think fit to call for further evidence upon such further evidence as he shall require and the said curator of intestate estates shall as soon after the expiration of the time allowed for proof of debts as he conveniently can pay the debts proved if the whole thereof can be paid and if not shall declare and pay a dividend thereon and if he shall collect any further assets after making such payment he shall in case any part of the debts proved remain unpaid pay the same and any debts subsequently proved before him (or a dividend thereon as the case may be) but such debts as shall be subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts and after payment of all debts fees and expenses incident to the collection management and administration of such personal estate shall pay over the residue to the personal representative of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment to relatives

&c. in petty cases.

11 Vic. No. 24 s. 12.
1 Pring 731.

23. After the expiration of twelve calendar months from the time fixed by the advertisement for creditors to come in and prove their debts if no debt shall be proved or no creditor having proved his debt shall remain unpaid it shall be lawful for any judge of the Supreme Court if he shall think fit so to do and upon such terms (if any) as to him may seem meet to order the curator of intestate estates to pay any sum not exceeding fifty pounds to any person claiming to be a party in distribution or to be a legatee under a will without letters of administration having been obtained or the will being proved and without legal proof of the right or title of the party so claiming and the said curator of intestate estates shall pay the money so ordered to be paid or if necessary shall remit the same in such manner as he shall think most safe and convenient.

Dis charge to curator
on winding up estate.11 Vic. No. 24 s. 14.
1 Pring 732.

24. The curator of intestate estates shall have the same power to require a release and discharge upon the winding up any estate in his charge and handing over the property which may be in his hands to the person or persons entitled thereto as any executor administrator or any other trustee now has in the like circumstances.

*Disposal of Moneys.*Moneys under control
of Supreme Court

25. It shall and may be lawful for the judges of the Supreme Court from time to time and at all times hereafter by any order or orders of

of the said court to direct that any sum or sums of money belonging to the estate or estates of an intestate person or persons over which the court now has or hereafter may have the direction or control shall from time to time be invested in the Government Savings Bank at Brisbane by the registrar curator of intestate estates or by such other person or persons under the direction of the said court who may have collected and received the same in such manner and on such account or accounts and for such purpose or purposes as the said court shall by its order or orders direct and that all and each of such sums and sum of money so to be invested as aforesaid shall from the time of being so invested respectively until the period when the same shall be withdrawn from the said savings bank bear interest at and after the rate allowed by the rules and regulations of the said bank. Provided always that no such sum or sums of money nor the interest from time to time due thereon shall be paid out by or withdrawn from the said savings bank otherwise than by order or orders of the said court or one of the judges thereof for that purpose first had and obtained.

31 VICTORIA No. 10.

may be invested in the Government Savings Bank by order of court.

1 Vic. No. 4 s. 1

1 Pring 727.

As to the interest upon moneys so invested.

Such moneys to be withdrawn by order of court only.

1 Vic. No. 4 s. 1.

1 Pring 727.

26. In the first week of January in every year the trustees of the said savings bank shall pay all sums of money which shall on the first day of that month have been in the said bank to the credit of any intestate estate for the term of the six years next preceding to the Colonial Treasurer of the colony for the public uses of the said colony and in support of the Government thereof and the said sums shall be applied thereto in such manner as shall be directed by any Act subject to the provisions hereinafter contained and the curator of intestate estates shall on the said first day of January in every year or within two days next following furnish to the trustees of the said savings bank and also to the Colonial Treasurer an account of all sums of money which shall be so payable which account shall be a sufficient authority for the said trustees to pay the sums mentioned therein to the said Colonial Treasurer.

Six years unclaimed fund.

11 Vic. No. 24 s. 17.

1 Pring 732.

27. If at any time after any such sum of money shall have been so paid to the said Colonial Treasurer any person shall present a petition to the Supreme Court or one of the judges thereof praying for the payment to him of such sum or any part thereof (a copy of such petition being previously served on the curator of intestate estates) and the said court or judge shall be of opinion upon any affidavit or other sufficient evidence adduced that the person petitioning is entitled to the same sum or any part thereof the said court or judge shall make an order for payment thereof after deducting any costs and expenses which may have been incurred by the curator of intestate estates or otherwise in respect of such application or shall make such other order touching the premises as shall be just and on any such order being served on the Colonial Secretary the same shall be immediately communicated to His Excellency the Governor and thereupon it shall be lawful for the said Governor and he is hereby required to issue a warrant under his hand to the Colonial Treasurer of the said colony to pay the money mentioned in such order to the party entitled to receive the same in pursuance thereof but no interest shall be paid or be payable on any such sum of money by virtue of any such order or otherwise from the time the same shall have been paid

Subsequent claims.

11 Vic. No. 24 s. 18.

1 Pring 732.

31 VICTORIA No. 10. paid to the Colonial Treasurer as aforesaid All sums of money which shall at any time hereafter be paid into the hands of the Colonial Treasurer as unclaimed assets in intestate estates and as fees and commissions on per centages received by the said curator of intestate estates on collections by him shall subject to the provisions of the section next preceding be applied to the public uses of the colony and in support of the Government thereof subject nevertheless to the proviso in the said recited Act contained and hereinbefore referred to.

Unclaimed balances of intestate estates paid to Colonial Treasurer to be applicable to public uses of the colony subject to proviso s. 2 of 13 Vic. No. 44.
17 Vic. No. 17 s. 1.
1 Pring 735.

Warrant to Treasurer. 28. The Colonial Treasurer shall issue and pay the money mentioned in such warrant as aforesaid to the person or persons to whom the same shall be payable by virtue of such order as aforesaid.

11 Vic. No. 24 s. 19.
1 Pring 733.

Credit for payment. 29. The said Colonial Treasurer shall in his accounts be allowed credit for all sums of money paid by him in pursuance of any such warrant as aforesaid and that the receipts of the respective persons to whom the same shall be so paid shall be full and valid discharges to the said Treasurer in passing his said accounts for any such sum or sums as shall be therein mentioned to have been received.

11 Vic. No. 24 s. 20.
1 Pring 733.

Powers of the Court.

30. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for or in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring 1638.
15 & 16 Vic. c. 76 s. 223
27 Vic. No. 14 s. 20.
3 Pring 316.

Commencement and Short Title.

31. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Curator of Intestate Estates Act of 1867.*"

Commencement of Act.
Short title.

An Act to Consolidate and Amend the Laws 31 VICTORIA No. 11.
 relating to Arbitration Interpleader Man-
 damus Quo Warranto Prohibition and In-
 junction. [28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws Preamble.
 relating to arbitration interpleader mandamus quo warranto
 prohibition and injunction Be it enacted by the Queen's Most
 Excellent Majesty by and with the advice and consent of the
 Legislative Council and Legislative Assembly of Queensland in
 Parliament assembled and by the authority of the same as follows—

Interpretation.

1. The words "court" and "judge" in this Act shall mean Interpretation.
 the Supreme Court and a judge thereof respectively unless some other
 meaning expressly appear or be necessarily implied.

Arbitration.

2. It shall and may be lawful for all merchants and traders Merchants and trad-
 ers &c. desiring to end
 controversies by arbi-
 tration may agree that
 their submission of
 the suit to the award
 of any person should
 be made a rule of any
 court of record &c.
 9 & 10 Wm. III.
 c. 15 s. 1.
 Agreement so made
 to be inserted in their
 submission &c.
 and others desiring to end any controversies suits or quarrels for which
 there is no other remedy but by personal action or suit in equity by
 arbitration to agree that their submission of their suit to the award
 or umpirage of any person or persons should be made a rule of the
 Supreme Court and to insert such their agreement in their submission
 on the condition of the bond or promise whereby they oblige
 themselves respectively to submit to the award or umpirage of any
 person or persons which agreement being so made and inserted in
 their submission or promise or condition of their respective bonds
 shall or may upon producing an affidavit thereof made by the
 witnesses thereto or any one of them in the said court and reading
 and filing the affidavit in court be entered of record in such court and
 the rule shall thereupon be made by the said court that the parties Parties to be finally
 concluded by such
 arbitration.
 shall submit to and finally be concluded by the arbitration or
 umpirage which shall be made concerning them by the arbitrators
 or umpire pursuant to such submission and in case of disobedience to
 such arbitration or umpirage the party neglecting or refusing to
 perform and execute the same or any part thereof shall be subject to
 all the penalties of contemning a rule of court when he is a suitor or
 defendant in such court and the court on motion shall issue process
 accordingly which process shall not be stopped or delayed in its
 execution by any order rule command or process of the court in
 equity unless it shall be made appear on oath to such court that the
 arbitrators or umpire misbehaved themselves and that such award
 arbitration or umpirage was procured by corruption or other undue Unless arbitrators
 misbehaved them-
 selves.
 means.

3. Any arbitration or umpirage procured by corruption or Corrupt arbitration
 void and may be set
 aside.
 9 & 10 Wm. III.
 c. 16 s. 2.
 undue means shall be judged and esteemed void and of none effect
 and accordingly be set aside by the Supreme Court at law or in equity
 so as complaint of such corruption or undue practice be made in the
 said

31 VICTORIE No. 11. said court before the last day of the next term after such arbitration or unpirage made and published to the parties anything in this Act contained to the contrary notwithstanding.

Submission to arbitration by rule of court &c. not to be revocable without leave of the court.
3 Vic. No. 4 s. 1.
1 Pring 37.
3 & 4 Wm. IV. c. 42 s. 39.

4. The power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of court or judge's order or order of *nisi prius* in any action now brought or which shall be hereafter brought in the Supreme Court or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of the said court shall not be revocable by any party to such reference without the leave of the said court or by leave of a judge and the arbitrator or umpire shall and may and is hereby required to proceed with the reference notwithstanding any such revocation and to make such award although the person making such revocation shall not afterwards attend the reference and the court or any judge thereof may from time to time enlarge the term for any such arbitrator making his award.

Power to compel the attendance of witnesses.
3 Vic. No. 4 s. 2.
1 Pring 38.
3 & 4 Wm. IV. c. 42 s. 40.

5. Where any reference shall have been made by any such rule or order as aforesaid or by any submission containing such agreement as aforesaid it shall be lawful for the said court or for any judge by rule or order to be made for that purpose to command the attendance and examination of any person to be named or the production of any documents to be mentioned in such rule or order and the disobedience to any such rule or order shall be deemed a contempt of court if in addition to the service of such rule or order an appointment of the time and place of attendance in obedience thereto signed by one at least of the arbitrators or by the umpire before whom the attendance is required shall also be served either together with or after the service of such rule or order. Provided always that every person whose attendance shall be so required shall be entitled to the like conduct money and payment of expenses and for loss of time as for and upon attendance at any trial. Provided also that the application made to such court or judge for such rule or order shall set forth the electoral district and place where such witness is residing at the time or satisfy such court or judge that such person cannot be found. Provided also that no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compelled to produce at a trial or to attend at more than two consecutive days to be named in such order.

Power of the arbitrators under a rule of court to administer an oath.
3 Vic. No. 4 s. 3.
1 Pring 38.
3 & 4 Wm. IV. c. 42 s. 41.

6. When in any rule or order of reference or in any submission to arbitration containing an agreement that the submission shall be made a rule of court it shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath it shall be lawful for the arbitrator or umpire or any one arbitrator and he or they are hereby authorised and required to administer an oath to such witnesses or to take their affirmation in cases where affirmation is allowed by law instead of oath and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence every person so offending shall be deemed and taken to be guilty of perjury and shall be prosecuted and punished accordingly.

7. The

7. The judge may in any case with the consent of both parties to the suit order the same with or without other matters within the jurisdiction of the court in dispute between such parties to be referred to arbitration to such person or persons and in such manner and on such terms as he shall think reasonable and just and such reference shall not be recoverable by either party except by consent of the judge and the award of the arbitrator or arbitrators or umpire shall be entered as the judgment in the cause and shall be as binding and effectual to all intents as if given by the judge provided that the judge may if he think fit on application to him at the first court held after the expiration of one week after the entry of such award set aside any such award so given as aforesaid or may with the consent of both parties aforesaid revoke the reference or order another reference to be made in the manner aforesaid.

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Suits may be settled by arbitration.
9 & 10 Vic. c. 95 s. 77.

8. Every agreement or submission to arbitration by consent whether by deed or instrument in writing not under seal may be made a rule of the Supreme Court on the application of any party thereto unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court.

Submission in writing when may be made rule of court.
20 Vic. No. 31 s. 8.
2 Pring 1648.
17 & 18 Vic. c. 123 s. 17.

9. Whenever the parties to any deed or instrument in writing to be hereafter made or executed or any of them shall agree that any then existing or future differences between them or any of them shall be referred to arbitration and any one or more of the parties so agreeing or any person or persons claiming through or under him or them shall nevertheless commence any action at law or suit in equity against the other party or parties or any of them or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred or any of them it shall be lawful for the Supreme Court or any judge thereof on application by the defendant or defendants or any of them after appearance and before plea or answer upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid and that the defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration to make a rule or order staying all proceedings in such action or suit on such terms as to costs and otherwise as to such court or judge may seem fit provided always that any such rule or order may at any time afterwards be discharged or varied as justice may require.

If action commenced after agreement to refer to arbitration court or judge may stay proceedings.
20 Vic. No. 31 s. 2.
2 Pring 1647.
17 & 18 Vic. c. 123 s. 11.

Compulsory Arbitration.

10. If it be made appear at any time after the issuing of the writ to the satisfaction of the court or a judge upon the application of either party that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way it shall be lawful for such court or judge upon such application if they or he shall think fit to decide such matter in a summary manner or to order that such matter either wholly or in part be referred to an arbitrator appointed by the parties or to an officer of the court or an associate or in country causes to the judge of any District Court or a Commissioner of the Supreme Court upon such

Power to court or judge to direct arbitration before trial.
17 & 18 Vic. c. 123 s. 3.

31 VICTORIA No. 11. such terms as to costs and otherwise as such court or judge shall think reasonable and the decision or order of such court or judge or the award or certificate of such referee shall be enforceable by the same process as the finding of a jury upon the matter referred.

Special case may be stated and question of fact tried.
17 & 18 Vic. c. 125 s. 4.

11. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court or upon a question of fact fit to be decided by a jury or by a judge upon the consent of both parties as hereinbefore provided it shall be lawful for such court or judge to direct a case to be stated or an issue or issues to be tried and the decision of the court upon such case and the finding of the jury or judge upon such issue or issues shall be taken and acted upon by the arbitrator as conclusive.

Special Case.

Arbitrator may state special case.
17 & 18 Vic. c. 125 s. 5.

12. It shall be lawful for the arbitrator upon any compulsory reference under this Act or upon any reference by consent of parties where the submission is or may be made a rule or order of the said Supreme Court and if it is not provided to the contrary to state his award as to the whole or any part thereof in the form of a special case for the opinion of the court and when an action is referred judgment if so ordered may be entered according to the opinion of the court.

Proceedings upon Arbitration.

Proceedings before and power of such arbitrator.
17 & 18 Vic. c. 125 s. 7.

13. The proceedings upon any such arbitration as aforesaid shall except otherwise directed hereby or by the submission or document authorising the reference be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the court the attendance of witnesses the production of documents enforcing or setting aside the award and otherwise as upon a reference made by consent under a rule of court or judge's order.

Application to set aside award.
17 & 18 Vic. c. 125 s. 9.

14. All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties whether made in vacation or term and if no such application is made or if no rule is granted thereon or if any rule granted thereon is afterwards discharged such award shall be final between the parties.

Enforcing of awards within period for setting them aside.
17 & 18 Vic. c. 125 s. 10.

15. Any award made on a compulsory reference under this Act may by authority of a judge on such terms as to him may seem reasonable be enforced at any time after seven days from the time of publication notwithstanding that the time for moving to set it aside has not elapsed.

The Arbitrators.

On failure of parties or arbitrators judge may appoint single arbitrator or umpire.
20 Vic. No. 31 s. 3.
2 Pring 1647.
17 & 18 Vic. c. 125 s. 12.

16. If in any case of arbitration the document authorising the reference provide that the reference shall be to a single arbitrator and all the parties do not after differences have arisen concur in the appointment of an arbitrator or if any appointed arbitrator refuse to act or become incapable of acting or die and the terms of such document do not show that it was intended that such vacancy should not be supplied and the parties do not concur in appointing a new one or if where the parties or two arbitrators are at liberty to appoint an umpire

umpire or third arbitrator such parties or arbitrators do not appoint an umpire or third arbitrator or if any appointed umpire or third arbitrator refuse to act or become incapable of acting or die and the terms of the document authorising the reference do not show that it was intended that such a vacancy should not be supplied and the parties or arbitrators respectively do not appoint a new one then in every such instance any party may serve the remaining parties or the arbitrators as the case may be with a written notice to concur in appointing or to appoint (as the case may be) an arbitrator umpire or third arbitrator respectively and if within fourteen clear days after such notice shall have been served no arbitrator umpire or third arbitrator be appointed it shall be lawful for any judge of the Supreme Court upon summons to be taken out by the party having served such notice as aforesaid to appoint an arbitrator umpire or third arbitrator as the case may be and such arbitrator umpire and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties.

17. When the reference is or is intended to be to two arbitrators one appointed by each party it shall be lawful for either party in the case of the death refusal to act or incapacity of any arbitrator appointed by him to substitute a new arbitrator unless the document authorising the reference show that it was intended that the vacancy should not be supplied and if on such a reference one party fail to appoint an arbitrator either originally or by way of substitution as aforesaid for fourteen clear days after the other party shall have appointed an arbitrator and shall have served the party so failing to appoint with notice in writing to make the appointment the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference and an award made by him shall be binding on both parties as if the appointment had been by consent. Provided however that the court or a judge may revoke such appointment on such terms as shall seem just.

18. When the reference is to two arbitrators and the terms of the document authorising it do not show that it was intended that there should not be an umpire or provide otherwise for the appointment of an umpire the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award unless they be called upon by notice as aforesaid to make the appointment sooner.

The Award.

19. The arbitrator acting under any such document as aforesaid or under any order referring the award back shall make his award under his hand and (unless such document or order respectively shall contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference or shall have been called upon to act by a notice in writing from any party but the parties may by consent in writing enlarge the term for making the award and it shall be lawful for the Supreme Court or for any judge thereof for good cause to be stated in the rule or order for enlargement from time to time to enlarge the term for making the award

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When reference is to two arbitrators and one party fails to appoint.
20 Vic. No. 31 s. 4.
2 Pring 164S.
17 & 18 Vic. c. 123 s. 13.

Two arbitrators may appoint umpire.
20 Vic. No. 31 s. 5.
2 Pring 164S.
17 & 18 Vic. c. 123 s. 14.

Award to be made in three months unless parties or court enlarge time.
20 Vic. No. 31 s. 6.
2 Pring 164S.
17 & 18 Vic. c. 123 s. 15.

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Rule to deliver possession of land pursuant to award.
20 Vic. No. 31 s. 7.
2 Pring 1618.
17 & 18 Vic. c. 125 s. 16.

20. When any award made on any such submission or document as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any such party either forthwith or at any future time or awards that any such party is entitled to the possession of any such lands or tenements it shall be lawful for the Supreme Court to order any party to the reference who shall be in possession of any such lands or tenements or any person in possession of the same claiming under or put in possession by him since the making the document authorising the reference to deliver possession of the same to the party entitled thereto pursuant to the award and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it and execution may issue and possession shall be delivered by the sheriff as on a judgment in ejectment.

Sending back Award.

Power to send back to arbitrator.
17 & 18 Vic. c. 125 s. 8.

21. In any case where reference shall be made to arbitration as aforesaid the court or a judge shall have power at any time and from time to time to remit the matters referred or any or either of them to the re-consideration and re-determination of the said arbitrator upon such terms as to costs and otherwise as to the said court or a judge may seem proper.

Interpleader.

Upon application by a defendant in an action of assumpsit &c. stating that the right in the subject matter is in a third party the court may order such third party to appear and maintain or relinquish his claim and in the meantime stay proceedings in such action.
1 & 2 Wm. IV. c. 58 s. 1. 2 Pring 1550.

22. Upon application made by or on behalf of any defendant sued in the Supreme Court of Queensland in any action of assumpsit debt detinue or trover such application being made after declaration and before plea by affidavit or otherwise showing that such defendant does not claim any interest in the subject matter of the suit but that the right thereto is claimed or supposed to belong to some third party who has sued or is expected to sue for the same and that such defendant does not in any manner collude with such third party but is ready to bring into court or to pay or dispose of the subject matter of the action in such manner as the court (or any judge thereof) may order or direct it shall be lawful for the court or any judge thereof to make rules and orders calling upon such third party to appear and to state the nature and particulars of his claim and maintain or relinquish his claim and upon such rule or order to hear the allegations as well of such third party as of the plaintiff and in the meantime to stay the proceedings in such action and finally to order such third party to make himself defendant in the same or some other action or to proceed to trial on one or more feigned issue or issues and also to direct which of the parties shall be plaintiff or defendant on such trial or with the consent of the plaintiff and such third

third party their counsel or attorneys to dispose of the merits of their claims and determine the same in a summary manner and to make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

23. The judgment in any such action or issue as may be directed by the court or judge and the decision of the court or judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

Judgment and decision to be final.
1 & 2 Wm. IV. c. 58 s. 2. 2 Pring 1581.

24. If such third party shall not appear upon such rule or order to maintain or relinquish his claim being duly served therewith or shall neglect or refuse to comply with any rule or order to be made after appearance it shall be lawful for the court or judge to declare such third party and all persons claiming by from or under him to be for ever barred from prosecuting his claim against the original defendant his executors or administrators saving nevertheless the right or claim of such third party against the plaintiff and thereupon to make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

If such third party shall not appear &c. the court may bar his claim against the original defendant.
1 & 2 Wm. IV. c. 58 s. 3. 2 Pring 1581.

25. Provided always that every order to be made in pursuance of this Act by a single judge not sitting in open court shall be liable to be rescinded or altered by the court in like manner as other orders made by a single judge.

Proviso as to orders made by a single judge.
1 & 2 Wm. IV. c. 58 s. 4. 2 Pring 1581.

26. Provided also that if upon application to a judge in the first instance or in any later stage of the proceedings he shall think the matter more fit for the decision of the court it shall be lawful for him to refer the matter to the court and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court instead of the order of a judge.

If a judge thinks the matter more fit for the decision of the court he may refer it.
1 & 2 Wm. IV. c. 58 s. 5. 2 Pring 1581.

27. Where an action has been commenced in respect of a common law claim for the recovery of money or goods or when the goods and chattels have been taken or are intended to be taken in execution under process issued from the Supreme Court or any court of record in the Colony of Queensland and the defendant in such action or the sheriff or other officer has applied for relief under the provisions of this Act it shall be lawful for the court or a judge to whom such application is made to exercise all the powers and authorities given to them by this Act though the titles of the claimants to the money goods or chattels in question or to the value or proceeds thereof have not a common origin but are adverse to and independent of one another.

Interpleader may be granted though titles have not a common origin.
26 Vic. No. 7 s. 7.
2 Pring 1655.
23 & 24 Vic. c. 126 s. 12.

28. Upon hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims it shall be lawful for the court or a judge wherever the amount in dispute or the value of the goods seized shall not exceed fifty pounds if it shall appear to them or him desirable and right to do so at the request of either party to dispose of the merits of the respective claims of such parties and to determine the same in a summary manner upon such terms as they or he shall think fit to impose and to make such other rules and orders therein as to costs and all other matters as may be just.

Power to court or judge to decide summarily in certain cases.
26 Vic. No. 7 s. 9.
2 Pring 1654.
23 & 24 Vic. c. 126 s. 14.

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Special case may be stated where facts un disputed.

26 Vic. No. 7 s. 10.

2 Pring 1656.

23 & 24 Vic. c. 126 s. 15.

Proceedings on special cases.

26 Vic. No. 7 s. 11.

2 Pring 1656.

23 & 24 Vic. c. 126 s. 16.

Judgment and decision when to be final.

26 Vic. No. 7 s. 12.

2 Pring 1656.

23 & 24 Vic. c. 126 s. 17.

For relief of sheriffs and other officers in execution of process against goods and chattels.

1 & 2 Wm. IV. c. 5

s. 6. 2 Pring 1581.

Court or judge may direct sale of goods seized in execution.

26 Vic. No. 7 s. 8.

2 Pring 1656.

23 & 24 Vic. c. 126 s. 13.

Sheriff's costs.

26 Vic. No. 7 s. 14.

2 Pring 1656.

29. In all cases of interpleader proceedings where the question is one of law and the facts are not in dispute the judge shall be at liberty at his discretion to decide the question without directing an action or issue and if he shall think it desirable to order that a special case be stated for the opinion of the court.

30. The proceedings upon such case shall as nearly as may be be the same as upon a special case stated under the *Pleading Act of 1867*.

31. The judgment in any such action or issue as may be directed by the court or a judge in any interpleader proceedings and the decision of the court or a judge in a summary manner shall be final and conclusive against the parties and all persons claiming by from or under them.

Interpleader by the Sheriff.

32. And whereas difficulties sometimes arise in the execution of process against goods and chattels issued by or under the authority of the Supreme Court by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process has issued whereby sheriffs and other officers are exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers be it therefore further enacted That when any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall and may be lawful to and for the Supreme Court or any judge thereof upon application of such sheriff or other officer made before or after the return of such process and as well before as after any action brought against such sheriff or other officer to call before them or him by rule of court as well the party issuing such process as the party making such claim and thereupon to exercise for the adjustment of such claims and the relief and protection of the sheriff or other officer all or any of the powers and authorities hereinbefore contained and make such rules and decisions as shall appear to be just according to the circumstances of the case and the costs of all such proceedings shall be in the discretion of the said court or judge.

33. Where goods or chattels have been seized in execution by a sheriff or other officer under process of the Supreme Court and some third party claims to be entitled under a bill of sale or otherwise to such goods or chattels by way of security for a debt the court or a judge may order a sale of the whole or part thereof upon such terms as to the payment of the whole or part of the secured debt or otherwise as they or he shall think fit and may direct the application of the proceeds of such sale in such manner and upon such terms as to such court or judge may seem just.

34. Where it shall appear to the Supreme Court or a judge thereof that the sheriff or other officer has acted *bonâ fide* and with due diligence in making application for relief under this Act in case of adverse claims it shall be lawful for the said court or a judge thereof to allow the sheriff or other officer all reasonable costs and expenses which he shall have incurred as to the court or a judge shall seem fit.

Rules Orders &c. in Interpleader Proceedings.

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35. All rules orders matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may together with the declaration in the cause (if any) be entered of record with a note in the margin expressing the true date of such entry to the end that the same may be evidence in future times if required and to secure and enforce the payments of costs directed by any such rule or order and every such rule or order so entered shall have the force and effect of a judgment of the Supreme Court.

Rules orders &c. made in interpleader proceedings may by entered of record and made evidence.
26 Vic. No. 7 s. 13.
2 Pring 1656.
23 & 24 Vic. c. 126 s. 18.

Prerogative Writ of Mandamus.

36. Persons required to make a return to a writ of mandamus shall make their return to the first writ.

Return to be made to first writ.
9 Anne c. 20 s. 1.

37. As often as any writ of mandamus shall issue out of the Supreme Court and a return shall be made thereunto it shall and may be lawful to and for the person or persons suing or prosecuting such writ of mandamus to plead to or traverse all or any the material facts contained within the said return to which the person or persons making such return shall reply take issue or demur and such further proceedings and in such manner shall be had therein for the determination thereof as might have been had if the person or persons suing such writ had brought his or their action on the case for a false return and if any issue shall be joined on such proceedings the person or persons suing such writ shall and may try the same in such place as an issue joined in such action on the case should or might have been tried and in such case a verdict shall be found for the person or persons suing such writ or judgment given for him or thereupon a demurrer or *nil dicit* or for want of a replication or other pleading he or they shall recover his or their damages and costs in such manner as he or they might have done in such action on the case as aforesaid such costs and damages to be levied by *capias ad satisfaciendum fieri facias* or *elegit* and a peremptory writ of mandamus shall be granted without delay for him or them for whom judgment shall be given as might have been if such return had been adjudged insufficient and in case judgment shall be given for the person or persons making such return to such writ he or they shall recover his or their costs of suit to be levied in manner aforesaid.

As soon as the return is made the prosecutor in such writ may plead &c.
9 Anne c. 20 s. 2.

To which the person returning may reply &c.

How proceedings shall be.

38. Provided always that if any damages shall be recovered by virtue of this Act against any such person or persons making such return to such writ as aforesaid he or they shall not be liable to be sued in any other action or suit for the making such return any law usage or custom to the contrary thereof in anywise notwithstanding.

Person against whom damages shall be recovered not liable to be sued in other actions.
9 Anne c. 20 s. 3.

39. And whereas writs of mandamus are sometimes issued to officers and other persons commanding them to admit to offices or do or perform other matters in respect whereof the persons to whom such writs are directed claim no right or interest or whose functions are merely ministerial in relation to such offices or matters and it may be proper that such officers and persons should in certain cases be protected against the payment of damages or costs to which they may otherwise become liable Be it therefore enacted That it shall be lawful for the court to which application may be made for any writ of

For protection of certain officers to whom writs of mandamus are directed.
1 Wm. IV. c. 21 s. 4.
2 Pring 1579.

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Proceedings not to abate by removal of officer.

1 Wm. IV. c. 21 s. 5.
2 Pring 1580.

40. In case the return to any such writ shall in pursuance of the authority given by this Act be expressed to be made on behalf of any other person as aforesaid the further proceedings on such writ shall not abate or be discontinued by the death or resignation of or removal from office of the person having made such return but the same shall and may be continued and carried on in the name of such person and if a peremptory writ shall be awarded the same shall and may be directed to any successor in office or right to such person.

Costs to be in the discretion of the court.

1 Wm. IV. c. 21 s. 6.
2 Pring 158C.

41. In all cases of application for any writ of mandamus whatsoever the costs of such application whether the writ shall be granted or refused and also the costs of the writ if the same shall be issued and obeyed shall be in the discretion of the court and the court is hereby authorised to order and direct by whom and to whom the same shall be paid.

Proceedings for prerogative writ of mandamus accelerated.

20 Vic. No 31 s. 42.
2 Pring 1652.

42. Upon application by motion for any writ of mandamus the rule may in all cases be absolute in the first instance if the court shall think fit and the writ may bear teste on the day of its issuing and may be made returnable forthwith whether in term or in vacation but time may be allowed to return it by the court or a judge either with or without terms.

The enactments herein relating to returns to writs of mandamus therein mentioned and the proceedings thereon extended to all other writs of mandamus.

1 Wm. IV. c. 21 s. 3.
2 Pring 1579.

43. The several enactments contained herein relating to the return to writs of mandamus and the proceedings on such returns and to the recovery of damages and costs shall be and the same are hereby extended and made applicable to all other writs of mandamus and the proceedings thereon.

Action for Mandamus.

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44. The plaintiff in any action in the Supreme Court except replevin and ejectment may indorse upon the writ and copy to be served a notice that the plaintiff intends to claim a writ of mandamus and the plaintiff may thereupon claim in the declaration either together with any other demand which may now be enforced in such action or separately a writ of mandamus commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested.

Action for mandamus to enforce the performance of duties.
20 Vic. No. 31 s. 34.
2 Pring 1652.

45. The declaration in such action shall set forth sufficient grounds upon which such claim is founded and shall set forth that the plaintiff is personally interested therein and that he sustains or may sustain damage by the non-performance of such duty and that performance thereof has been demanded by him and refused or neglected.

Declaration in action for mandamus.
20 Vic. No. 31 s. 35.
2 Pring 1652.

46. The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects as nearly as may be and costs shall be recoverable by either party as in an ordinary action for the recovery of damages.

Proceedings upon claim for mandamus.
20 Vic. No. 31 s. 36.
2 Pring 1652.

47. In case judgment shall be given to the plaintiff that a mandamus do issue it shall be lawful for the court if it shall see fit besides issuing execution in the ordinary way for the costs and damages also to issue a peremptory writ of mandamus to the defendant commanding him forthwith to perform the duty to be enforced.

Judgment and execution.
20 Vic. No. 31 s. 37.
2 Pring 1652.

48. The writ need not recite the declaration or other proceedings or the matter therein stated but shall simply command the performance of the duty and in other respects shall be in the form of an ordinary writ of execution except that it shall be directed to the party and not to the sheriff and may be issued in term or vacation and returnable forthwith and no return thereto except that of compliance shall be allowed but time to return it may upon sufficient grounds be allowed by the court or a judge either with or without terms.

Form of peremptory writ.
20 Vic. No. 31 s. 38.
2 Pring 1652.

49. The writ of mandamus so issued as aforesaid shall have the same force and effect as a peremptory writ of mandamus and in case of disobedience may be enforced by attachment.

Effect of mandamus.
20 Vic. No. 31 s. 39.
2 Pring 1652.

50. The court may upon application by the plaintiff besides or instead of proceeding against the disobedient party by attachment direct that the act required to be done may be done by the plaintiff or some other person appointed by the court at the expense of the defendant and upon the act being done the amount of such expense may be ascertained by the court either by writ of inquiry or reference to the prothonotary as the court or a judge may order and the court may order payment of the amount of such expenses and costs and enforce payment thereof by execution.

The court may order the act to be done at the expense of the defendant.
20 Vic. No. 31 s. 40.
2 Pring 1652.

51. Nothing herein contained shall take away the jurisdiction of the Supreme Court to grant writs of mandamus nor shall any writ of mandamus issued out of that court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this Act.

Prerogative writ of mandamus preserved.
20 Vic. No. 31 s. 41.
2 Pring 1652.

Injunction.

52. In all cases of breach of contract or other injury where the party injured is entitled to maintain and has brought an action he

Claim of writ of injunction.
20 Vic. No. 31 s. 44.
2 Pring 1653.

31 VICTORIE No. 11. may in like case and manner as hereinbefore provided with respect to mandamus claim a writ of injunction against the repetition or continuance of such breach of contract or other injury or the committal of any breach of contract or injury of a like kind arising out of the said contract or relating to the same property or right and he may also in the same action include a claim for damages or other redress.

Form of writ of summons and indorsement thereon.
20 Vic. No. 31 s. 45.
2 Pring 1653.
17 & 18 Vic. c. 125 s. 80.

53. The writ of summons in such action shall be in the same form as the writ of summons in any personal action but on every such writ and copy thereof there shall be indorsed a notice that in default of appearance the plaintiff may besides proceeding to judgment and execution for damages and costs apply for and obtain a writ of injunction.

Form of proceedings and of judgment.
20 Vic. No. 31 s. 46.
2 Pring 1653.
17 & 18 Vic. c. 125 s. 81.

54. The proceedings in such action shall be the same as nearly as may be and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained and in such action judgment may be given that the writ of injunction do or do not issue as justice may require and in case of disobedience such writ of injunction may be enforced by attachment by the court or where such court shall not be sitting by a judge.

Writ of injunction may be applied for at any stage of the cause.
20 Vic. No. 31 s. 47.
2 Pring 1653.
17 & 18 Vic. c. 125 s. 82.

55. It shall be lawful for the plaintiff at any time after the commencement of the action and whether before or after judgment to apply *ex parte* to the court or a judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right and such writ may be granted or denied by the court or judge upon such terms as to the duration of the writ keeping an account giving security or otherwise as to such court or judge shall seem reasonable and just and in case of disobedience such writ may be enforced by attachment by the court or out of term by a judge Provided always that an order for a writ of injunction made by a judge or any writ issued by virtue thereof may be discharged or varied or set aside by the court on application made thereto by any party dissatisfied with such order.

Mode of enforcing writs of injunction against corporations.
23 & 24 Vic. c. 126 s. 33.
26 Vic. No. 7 s. 28.
2 Pring 1658.

56. Writs of injunction against a corporation may be enforced either by attachment against the directors or other officers thereof as in the case of a mandamus or by writ of sequestration against their property and effects to be issued in such form and tested and returnable in like manner as writs of execution and to be proceeded upon and executed in like manner as writs of sequestration issuing out of the Court of Chancery.

Mandamus and Injunction.

Costs of writs of mandamus and injunctions may be included in writs.
26 Vic. No. 7 s. 27.
2 Pring 1658.
23 & 24 Vic. c. 126 s. 32.

57. In all cases in which a writ of mandamus or of injunction is issued under the provisions of the Interdict Act for the time being such writ shall unless otherwise ordered by the court or a judge in addition to the matter directed to be inserted therein command the defendant to pay to the plaintiff the costs of preparing issuing and serving such writ and payment of such costs may be enforced in the same manner as costs payable under a rule of court are now by law enforceable.

Quo

Quo Warranto.

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58. From and after the commencement of this Act in case any person or persons shall usurp intrude into or unlawfully hold and execute any offices or franchises it shall and may be lawful to and for the proper officer with the leave of the Supreme Court to exhibit one or more information or informations in the nature of a quo warranto at the relation of any person or persons desiring to sue or prosecute the same and who shall be mentioned in such information or informations to be the relator or relators against such person or persons so usurping intruding into or unlawfully holding and executing any of the said offices or franchises and to proceed therein in such manner as is usual in cases of information in the nature of a quo warranto and if it shall appear to the court that the several rights of divers persons to the said offices or franchises may properly be determined on one information it shall and may be lawful for the court to give leave to exhibit one such information against several persons in order to try their respective rights to such offices or franchises and such person or persons against whom such information or informations in the nature of a quo warranto shall be sued or prosecuted shall appear and plead as of the same term or sessions in which the said information or informations shall be filed unless the court where such information shall be filed shall give further time to such person or persons against whom such information shall be exhibited to plead and such person or persons who shall sue or prosecute such information or informations in the nature of a quo warranto shall proceed thereupon with the most convenient speed that may be any law or usage to the contrary thereof in anywise notwithstanding.

How informations in the nature of quo warranto may be exhibited against such as intrude &c. into offices &c.
9 Anne c. 20 s. 4.

59. In case any person or persons against whom any information or informations in the nature of a quo warranto shall in any of the said cases be exhibited in the Supreme Court shall be found or adjudged guilty of an usurpation or intrusion into or unlawfully holding and executing any of the said offices or franchises it shall and may be lawful to and for the said Supreme Court as well to give judgment of ouster against such person or persons of and from any of the said offices or franchises as to fine such person or persons respectively for his or their usurping intruding into or unlawfully holding and executing any of the said offices or franchises and also it shall and may be lawful to and for the said court to give judgment that the relator or relators in such information named shall recover his or their costs of such prosecution and if judgment shall be given for the defendant or defendants in such information he or they for whom such judgment shall be given shall recover his or their costs therein expended against such relator or relators such costs to be levied in manner aforesaid.

Judgment of ouster shall be given against persons found guilty of usurpation &c.
9 Anne c. 20 s. 5.

Prohibition.

60. It shall not be necessary to file a suggestion on any application for a writ of prohibition but such application may be made on affidavits only and in case the party applying shall be directed to declare in prohibition before writ issued such declaration shall be expressed to be on behalf of such party only and not as heretofore on the behalf of the party and of Her Majesty and shall contain and set forth in a concise manner so much only of the proceeding in the court

And the relator shall recover costs if judgment be given for the defendant he shall have costs against the relator.

Applications for writs of prohibition may be made on affidavit only.

1 Wm. IV. c. 21 s. 1.
2 Pring 1579.

Contents of declaration in case the party is directed to declare in prohibition.

below

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Defendant may demur to declaration.

Judgment.

Damages.

Costs.

below as may be necessary to show the ground of the application without alleging the delivery of a writ or any contempt and shall conclude by praying that a writ of prohibition may issue to which declaration the party defendant may demur or plead such matters by way of traverse or otherwise as may be proper to show that the writ ought not to issue and conclude by praying that such writ may not issue and judgment shall be given that the writ of prohibition do or do not issue as justice may require and the party in whose favor judgment shall be given whether on nonsuit verdict demurrer or otherwise shall be entitled to the costs attending the application and subsequent proceedings and have judgment to recover the same and in case a verdict shall be given for the party plaintiff in such declaration it shall be lawful for the jury to assess damages for which judgment shall also be given but such assessment shall not be necessary to entitle the plaintiff to costs.

General Provision.

Proceedings on prerogative writ of mandamus.
20 Vic. No. 31 s. 43.
2 Pring 1653.
17 & 18 Vic. c. 125 s. 77.

61. The provisions of the *Pleading and Common Law Practice and Process Acts* of 1867 and of this act so far as they are applicable shall apply to the pleadings and proceedings upon a prerogative or other writ of mandamus or for an injunction quo warranto or prohibition.

Powers of the Court.

General rules may be made by the judges.
17 Vic. No. 21 s. 174.
2 Pring p. 1633.
15 & 16 Vic. c. 76 s. 223.
27 Vic. No. 14 s. 20.
3 Pring 316.

62. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper. Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

New forms of writs and other proceedings.
23 & 24 Vic. c. 126 s. 38.
27 Vic. No. 14 s. 20.
3 Pring 316.

63. Such new or altered writs and forms of proceedings may be issued entered and taken as may be by the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one be deemed necessary or expedient for giving effect to the provisions hereinbefore contained and in such forms as the judges of such court or such majority of them shall from time to time think fit to order and such writs and proceedings shall be acted upon and enforced in such and the same manner as writs and proceedings of the said court are now acted upon and enforced or as near thereto as the circumstances of the case will admit and any existing writ or proceeding the form of which shall be in any manner altered in pursuance of this Act shall nevertheless be of the same force and virtue as if no alteration had been made therein except as far as the effect thereof may be varied by this Act.

Commencement and Short Title.

Commencement of Act.

Short title.

64. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Interdict Act of 1867.*"

An Act to Consolidate and Amend the Laws 31 VICTORIA No. 18. relating to Proceedings in Equity.

[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws Preamble.
relating to proceedings in equity Be it enacted by the Queen's
Most Excellent Majesty by and with the advice and consent of the
Legislative Council and Legislative Assembly of Queensland in Par-
liament assembled and by the authority of the same as follows—

Interpretation.

1. In the construction of this Act the words "bill of complaint" Construction of
shall mean also and include information the word "affidavit" shall terms.
mean also and include affirmation and wherever the Supreme Court 17 Vic. No. 7 s. 52.
is mentioned or indicated herein the enactment shall be taken to 2 Pring 1719.
refer either to the judge acting as primary judge in equity or to the
court holden before two or more of the judges thereof (or equally to
one and the other) as the context or the nature of the case (having
regard to their present jurisdictions respectively) may require and the
words "master" and "registrar" shall mean the proper officer and
no part of Australia nor any island adjacent thereto being part of the
dominions of Her Majesty shall be deemed to be beyond the seas within
the meaning of this Act.

Printing.

2. It shall be lawful for the Supreme Court from time to time Power to Supremo
to make any order or orders directing that the provisions hereinafter Court to revive
contained as to printing and printed copies shall be suspended until present practice as to
further order and until such further order matters herein required to filing of bills &c.
be printed may be in writing. 17 Vic. No. 7 s. 10.
2 Pring 1710.
15 & 16 Vic. c. 86
s. 9.

3. It shall not be necessary to engross bills of complaint on Engrossing bills and
parchment and the proper officers of the Supreme Court shall receive subsequent pleadings
and file bills of complaint printed on paper and in respect of all on parchment unne-
subsequent pleadings in any suit no such engrossment on parchment cessary.
shall be necessary and such pleadings shall be engrossed or written 17 Vic. No. 7 s. 1.
on paper. 2 Pring 1709.
15 & 16 Vic. c. 86
s. 1.

Exceptions to Proceedings.

4. No exceptions shall be taken to bills answers and other Excepting to bills &c.
proceedings in the said court for impertinence Provided always that for impertinence
it shall be lawful for the court to direct the costs occasioned by any abolished.
impertinent matter introduced into any proceeding in the court to be Proviso as to costs.
paid by the party introducing the same upon application being made 17 Vic. No. 7 s. 17.
to the court for that purpose. 2 Pring 1711.
15 & 16 Vic. c. 86
s. 17.

Bills.

5. Every bill of complaint shall contain as concisely as may Bills of complaint to
be a narrative of the material facts matters and circumstances on contain concise nar-
which the plaintiff relies such narrative being divided into paragraphs ratives of material
numbered consecutively and each paragraph containing as nearly as facts &c. divided into
may be a separate and distinct statement or allegation and shall pray numbered paragraphs
specifically but shall not contain
interrogatories.

31 VICTORIA No. 18. specifically for the relief which the plaintiff may conceive himself entitled to and also for general relief but such bill of complaint shall not contain any interrogatories for the examination of the defendant.

17 Vic. No. 7 s. 7.

2 Pring 1710.

15 & 16 Vic. c. 86

s. 10.

Plaintiff to deliver printed copies of bill or claim at rate fixed by Supreme Court.

17 Vic. No. 7 s. 8.

2 Pring 1710.

15 & 16 Vic. c. 86

s. 7.

Written copies of bills may be served in certain cases upon plaintiff undertaking to file a printed copy in fourteen days.

27 Vic. No. 7 s. 6.

1 Pring 1709.

15 & 16 Vic. c. 86

s. 6.

6. The plaintiff in any suit in the said court shall be bound to deliver to the defendant or his solicitor upon application for the same such a number of printed copies of his bill of complaint as he shall have occasion for upon being paid for the same at such rate as shall be prescribed by any general order of the Supreme Court in that behalf.

7. Notwithstanding the provisions hereinbefore contained the proper officers of the court may receive and file a written copy of any bill of complaint praying a writ of injunction or a writ of *ne exeat regno* or filed for the purpose either solely or among other things of making an infant a ward of the court upon the personal undertaking of the plaintiff or his solicitor to file a printed copy of such bill within fourteen days and every bill of complaint so filed shall be deemed and taken to have been filed at the time of filing the written copy thereof and a written copy of any such bill of complaint stamped as aforesaid and with such indorsement thereon as hereinafter mentioned may be served on any defendant thereto and such service shall have the same effect as the service of a printed copy.

Prochein Ami.

Person named as next friend to sign an authority.

17 Vic. No. 7 s. 11.

2 Pring 1710.

15 & 16 Vic. c. 86

s. 11.

8. Before the name of any person shall be used in any suit to be instituted as next friend of any infant married woman or other party or as relator in any information such person shall sign a written authority to the solicitor for that purpose and such authority shall be filed with the bill or information.

Amendment of Bill.

Amendments to original bill also to be filed &c.

In certain cases a printed bill may contain written amendments.

17 Vic. No. 7 s. 9.

2 Pring 1710.

15 & 16 Vic. c. 86

s. 8.

9. Upon the amendment of any bill of complaint to be filed in the said court the provisions herein contained with respect to filing and serving and delivering printed copies thereof shall so far as may be extend and be applicable to the bill as amended. Provided that where according to the present practice of the said court an amendment of a bill may be made without a new engrossment thereof or under such other circumstances as shall be prescribed by any general order of the Supreme Court in that behalf a bill may be wholly or partially amended by written alterations in the printed bill of complaint so to be filed as aforesaid.

New facts &c. after commencement of suit to be introduced as amendments.

17 Vic. No. 7 s. 42.

2 Pring 1717.

15 & 16 Vic. c. 86

s. 53.

10. It shall not be necessary to exhibit any supplemental bill for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit but such facts or circumstances may be introduced by way of amendment into the original bill of complaint in the suit if the cause is otherwise in such a state as to allow of an amendment being made in the bill and if not the plaintiff shall be at liberty to state such facts or circumstances on the record in such manner and subject to such rules and regulations with respect to the proof thereof and the affording the defendant leave and opportunity of answering and meeting the same as shall in that behalf be prescribed by any general order of the Supreme Court.

Service

Service of Bill.

31 VICTORIA No. 18.

11. No writ of subpoena to appear to and answer a bill of complaint shall be necessary or used.

12. In lieu of serving the defendant to a bill of complaint with a writ of subpoena the defendant shall be served with a printed copy of the bill of complaint with an indorsement thereon in the form or to the effect following—

Form of Indorsement on Bill of Complaint.

“ VICTORIA R.

“ To the within-named defendant C. D. greeting

“ We command you [and every of you *where there is more than one defendant*] “ that within days after service hereof on you exclusive of the day of such

“ service you cause an appearance to be entered for you in our Supreme Court to the “ within bill of complaint and that you observe and do what our said court shall direct.

“ Witness the honorable [name] the Chief Justice of our said court at Brisbane

“ the day of in the year of our Lord and in

“ the year of our reign.

“ NOTE—If you fail to comply with the above directions you will be liable to be “ arrested and imprisoned.

“ Appearances are to be entered at the office of the master in equity Supreme Court- “ house Queen street Brisbane.”

with such variations as circumstances may require and stamped with a proper stamp by one of the clerks of the Supreme Court.

13. The filing of a bill of a printed complaint shall have the same effect as the filing of a bill of complaint and the issuing of a subpoena thereon formerly had and the service upon the defendant of a printed copy of the bill of complaint so filed with such indorsement thereon so stamped as aforesaid shall have the same effect as the service on him of a writ of subpoena formerly had and shall entitle the plaintiff in such suit to such remedies for default of appearance and otherwise as he was aforesaid entitled to in case of due and proper service of a subpoena.

14. The service upon any defendant of a printed copy of a bill of complaint shall be effected in the same manner as service of a writ of subpoena to appear to and answer a bill of complaint was formerly effected except in respect of the production of the original provided that the court shall be at liberty to direct substituted service thereof in such manner and in such cases as it shall think fit.

Substituted Service.

15. It shall be lawful for the Supreme Court in its equitable jurisdiction in any suit instituted in the said court concerning lands or hereditaments situate in the colony or concerning any charge lien judgment or encumbrance thereon or concerning any money vested in any Government or public stock or public shares in public or joint stock companies or concerns in the said colony or concerning the interest dividends or produce thereof upon special motion in open court on behalf of the complainant in such suit founded upon affidavit and such other documents as may be applicable for the purpose of ascertaining the residence of defendants in such suit or parties sought to be served and the particulars material to identify them and their residence and also specifying the means whereby such service may be authenticated and especially where there are any officers civil or military appointed or serving under the Government

Writs of subpoena abolished.

17 Vic. No. 7 s. 2.

2 Pring 1709.

15 & 16 Vic. c. 86 s. 2.

Defendants to be served with a printed copy of bill in lieu of subpoena and summons.

17 Vic. No. 7 s. 3.

2 Pring 1709.

15 & 16 Vic. c. 86 s. 3.

Form of indorsement on bill of complaint.

17 Vic. No. 7 schedule.

2 Pring 1719.

15 & 16 Vic. c. 86 schedule.

Service of a bill to have same effect as the issuing of subpoena and summons.

17 Vic. No. 7 s. 4.

2 Pring 1709.

15 & 16 Vic. c. 86 s. 4.

As to service of bill.

17 Vic. No. 7 s. 5.

2 Pring 1709.

15 & 16 Vic. c. 86 s. 5.

Equity process to be served in parts beyond jurisdiction.

13 Vic. No. 31 s. 1.

2 Pring 1688.

31 VICTORIA No. 18. of the said colony residing at or near the place of the alleged residence of the said defendants or parties to order that service of any bill and indorsement thereon and of all subsequent process thereupon upon any defendant in such suit then residing out of the jurisdiction of the said court in such parts in which he shall so reside and be so served or in case the said court shall deem fit upon the receiver steward agent or other person receiving or remitting the rents of the premises or the dividends and profits of the said stock or concerns hereinbefore mentioned (if any) the subject or in part the subject matter of the suit returnable at such time as the court shall direct shall be deemed good service on every such defendant or party and afterwards upon an affidavit of such service had to order an appearance to be entered for such defendant or party in such manner and at such times as the court shall direct and thereupon it shall be lawful for such court and the plaintiff to proceed upon such appearance entered or such service so made as aforesaid as fully and effectually as if such appearance had been duly entered by a defendant residing or such service had been duly made within the jurisdiction of the said court.

Substitution of such service.
13 Vic. No. 31 s. 2.
2 Pring 1688.

16. When it shall appear upon affidavit to the satisfaction of the said court that any defendant in any such suit cannot by reasonable diligence be served with the bill and indorsement thereon or that upon inquiry at his last or usual place of abode he could not be found so as to be served with such process and there is just ground for believing that such defendant secretes or withdraws himself so as to avoid being served with the process of such court then it shall be lawful for the said court to order such substitution of such service of the bill and indorsement thereon as the said court shall think reasonable.

Special order for absolute decree.
13 Vic. No. 31 s. 3.
2 Pring 1688.

17. Provided that no decree in cases within the two sections last preceding shall be made absolute in the said court without the special order of such court made upon a special motion for that purpose. Provided further that nothing in this Act shall be held to make it compulsory upon the complainant in any suit to serve or bring before such court any party or person further or otherwise than such complainant is now by law or the practice of such court required to do.

Joinder of Parties.

Court may proceed without representative of deceased person or may appoint one.
17 Vic. No. 7 s. 33.
2 Pring 1715.
15 & 16 Vic. c. 86 s. 44.

18. If in any suit or proceeding before the court it shall appear to the court that any deceased person who was interested in the matters in question has no legal personal representative it shall be lawful for the court either to proceed in the absence of any person representing the estate of such deceased person or to appoint some person to represent such estate for all the purposes of the suit or proceeding on such notice (if any) as the court shall think fit either specially or generally by public advertisement and every order made by the said court in reference to the matter and any orders consequent thereon shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly constituted legal personal representative of such deceased person and such legal personal representative had been a party to the suit or proceeding and had duly appeared and submitted his rights and interests to the protection of the court.

19. No

19. No suit shall be dismissed by reason only of the misjoinder of persons as plaintiffs therein but wherever it shall appear to the court that notwithstanding the conflict of interest in the co-plaintiffs or the want of interest in some of the plaintiffs or the existence of some ground of defence affecting some or one of the plaintiffs the plaintiffs or some or one of them are or is entitled to relief the court shall have power to grant such relief and to modify its decree according to the special circumstances of the case and for that purpose to direct such amendments if any as may be necessary and at the hearing before such amendments are made to treat any one or more of the plaintiffs as if he or they was or were a defendant or defendants in the suit and the remaining or other plaintiff or plaintiffs was or were the only plaintiff or plaintiffs on the record and where there is a misjoinder of plaintiffs and the plaintiff having an interest shall have died leaving a plaintiff on the record without an interest the court may at the hearing of the cause order the cause to stand revived as may appear just and proceed to a decision of the cause if it shall see fit and to give such directions as to costs or otherwise as may appear just and expedient.

20. It shall be lawful for the court to adjudicate on questions arising between parties notwithstanding that they may be some only of the parties interested in the property respecting which the question may have arisen or that the property in question is comprised with other property in the same settlement will or other instrument without making the other parties interested in the property respecting which the question may have arisen or interested under the same settlement will or other instrument parties to the suit and without requiring the whole trusts and purposes of the settlement will or other instrument to be executed under the direction of the court and without taking the accounts of the trustees or other accounting parties or ascertaining the particulars or amount of the property touching which the question or questions may have arisen Provided always that if the court shall be of opinion that the application is fraudulent or collusive or for some other reason ought not to be entertained it shall have power to refuse to make the order prayed.

21. Upon any suit becoming abated by death marriage or otherwise or defective by reason of some change or transmission of interest or liability it shall not be necessary to exhibit any bill of revivor or supplemental bill in order to obtain the usual order to revive such suit or the usual or necessary decree or order to carry on the proceedings but an order to the effect of the usual order to revive or of the usual supplemental decree may be obtained as of course upon an allegation of the abatement of such suit or of the same having become defective and of the change or transmission of interest or liability and an order so obtained when served upon the party or parties who according to the present practice of the court would be defendant or defendants to the bill of revivor or supplemental bill shall from the time of such service be binding on such party or parties in the same manner in every respect as if such order had been regularly obtained according to the previous practice of the court and such party or parties shall thenceforth become a party or parties to the

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No suit to be dismissed for misjoinder of plaintiffs.
17 Vic. No. 7 s. 38.
2 Pring 1716.
15 & 16 Vic. c. 86 s. 49.

Court may decide between some of the parties without making other interested persons parties.
17 Vic. No. 7 s. 40.
2 Pring 1716.
15 & 16 Vic. c. 86 s. 51.
Proviso.

Proviso.

In case of abatement &c. an order may be made which shall have same effect as a bill of revivor.
17 Vic. No. 7 s. 41.
2 Pring 1717.
15 & 16 Vic. c. 86 s. 52.

31 VICTORIÆ No. 18. the suit and shall be bound to enter an appearance thereto within such time and in like manner as if he or they had been duly served with process to appear to a bill of revivor or supplemental bill filed against him. Provided that it shall be open to the party or parties so served within such time after service as shall be in that behalf prescribed by any general order of the Supreme Court to apply to the court by motion or petition to discharge such order on any ground which would have been open to him on a bill of revivor or supplemental bill stating the previous proceedings in the suit and the alleged change or transmission of interest or liability and praying the usual relief consequent thereon. Provided also that if any party so served shall be under any disability other than coverture such order shall be of no force or effect as against such party until a guardian or guardians *ad litem* shall have been duly appointed for such party and such time shall have elapsed thereafter as shall be prescribed by any general order of the Supreme Court in that behalf.

Objections for want of parties.

17 Vic. No. 7 s. 32.

2 Pring 1714.

15 & 16 Vic. c. 86 s. 42.

22. It shall not be competent to any defendant to take any objection for want of parties in any case to which the rules next hereinafter set forth extend and such rules shall be taken as part of the law and practice of the court and any law or practice inconsistent therewith is hereby annulled.

Rule 1. Any residuary legatee or next of kin may without serving the remaining residuary legatees or next of kin have a decree for the administration of the personal estate of a deceased person.

Rule 2. Any legatee interested in a legacy charged upon real estate and any person interested in the proceeds of real estate directed to be sold may without serving any other legatee or person interested in the proceeds of the estate have a decree for the administration of the estate of a deceased person.

Rule 3. Any residuary devisee or heir may without serving any co-residuary devisee or co-heir have the like decree.

Rule 4. Any one of several *cestui que* trust under any deed or instrument may without serving any other of such *cestuis que* trust have a decree for the execution of the trusts of the deed or instrument.

Rule 5. In all cases of suits for the protection of property pending litigation and in all cases in the nature of waste one person may sue on behalf of himself and of all persons having the same interest.

Rule 6. Any executor administrator or trustee may obtain a decree against any one legatee next of kin or *cestui que* trust for the administration of the estate or the execution of the trusts.

Rule 7. In all the above cases the court if it shall see fit may require any other person or persons to be made a party or parties to the suit and may if it shall see fit give the conduct of the suit to such person as it may deem proper and may make such order in any particular case as it may deem just for placing the defendant on the record

record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. 31 VICTORIA No. 18.

Rule 8. In all the above cases the persons who according to the previous practice of the court would be necessary parties to the suit shall be served with notice of the decree and after such notice they shall be bound by the proceedings in the same manner as if they had been originally made parties to the suit and they may by an order of course have liberty to attend the proceedings under the decree and any party so served may within such time as shall in that behalf be prescribed by the general order of the Supreme Court apply to the court to add to the decree.

Rule 9. In all suits concerning real or personal estate which is vested in trustees under a will settlement or otherwise such trustees shall represent the persons beneficially interested under the trust in the same manner and to the same extent as the executors or administrators in suits concerning personal estate represent the persons beneficially interested in such personal estate and in such cases it shall not be necessary to make the persons beneficially interested under the trusts parties to the suit but the court may upon consideration of the matter on the hearing if it shall so think fit order such persons or any of them to be made parties.

Interrogatories.

23. Within a time to be limited by a general order of the Supreme Court in that behalf the plaintiff in any suit in the said court commenced by bill may if he requires an answer from any defendant thereto file in the office of the master in equity interrogatories for the examination of the defendant or defendants or such of them from whom he shall require an answer and deliver to the defendant or defendants so required to answer or to his or their solicitor a copy of such interrogatories or of such of them as shall be applicable to the particular defendant or defendants and no defendant shall be called upon or required to put in any answer to a bill unless interrogatories shall have been so filed and a copy thereof delivered to him or his solicitor within the time so to be limited or within such further time as the court shall think fit to direct.

Interrogatories to be filed in office of master in equity by plaintiff within time prescribed.
17 Vic. No. 7 s. 12.
2 Pring 1710.
15 & 16 Vic. c. 86 s. 12.

24. It shall be lawful for any defendant in any suit commenced by bill but in suits commenced by bill which the defendant is required to answer not until after he shall have put in a sufficient answer to the bill and without filing any cross bill of discovery to file interrogatories for the examination of the plaintiff to which shall be prefixed a concise statement of the subjects on which a discovery is sought and to deliver a copy of such interrogatories to the plaintiff or his solicitor and such plaintiff shall be bound to answer such interrogatories in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories shall

In certain cases defendant after answer may file interrogatories for examination of plaintiff.
17 Vic. No. 7 s. 19.
2 Pring 1711.
15 & 16 Vic. c. 86.

31 VICTORIA No. 18. shall have been filed and as if the defendant to such bill of discovery had on the same day duly appeared and the practice of the court with reference to excepting to answers for insufficiency or for scandal shall extend and be applicable to answers put in to such interrogatories Provided that in determining the materiality or relevancy of any such answer or of any exception thereto the court is to have regard in suits commenced by bill to the statements contained in the original bill and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff Provided also that a defendant if he shall think fit so to do may exhibit a cross bill of discovery against the plaintiff instead of filing interrogatories for his examination.

Discovery of Documents.

Court or judge may order defendant to produce documents on oath.

17 Vic. No. 7 s. 18.
2 Pring 1711.
15 & 16 Vic. c. 86 s. 18.

25. It shall be lawful for the court upon the application of the plaintiff in any suit commenced by bill whether the defendant may or may not have been required to answer the bill or interrogated as to the possession of documents to make an order for the production by any defendant upon oath of such of the documents in his possession or power relating to matters in question in the suit as the court shall think right and the master in equity shall have the like power under references to him and the court or master (as the case may be) may deal with such documents when produced in such manner as shall appear just.

Plaintiff may be required to produce documents on oath.

17 Vic. No. 7 s. 20.
2 Pring 1712.
15 & 16 Vic. c. 86 s. 20.

26. It shall be lawful for the court upon the application of any defendant in any suit but where the defendant is required to answer the bill not until after he has put in a full and sufficient answer unless the court shall make any order to the contrary to make an order for the production by the plaintiff in such suit on oath of such of the documents in his possession or power relating to the matters in question in the suit as the court shall think right and the master in equity shall have the like powers under references to him and the court or master (as the case may be) may deal with such documents when produced in such manner as shall appear just.

Admissions.

One party may call on another to admit documents.

27 Vic. No. 14 s. 15.
3 Pring 315.
21 & 22 Vic. c. 27 s. 6.

27. In any case in which all parties to a suit are competent to make admissions any party may call on any other party by notice to admit any document saving all just exceptions and in case of refusal or neglect to admit the cost of proving the document shall be paid by the party so neglecting or refusing whatever the result of the cause may be unless the court shall certify that the refusal to admit was reasonable and no costs of proving any document shall be allowed unless such notice be given except in cases where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

Defence.

Defendants may answer without leave within the time allowed though not required so to do.

17 Vic. No. 7 s. 13.
2 Pring 1710.
15 & 16 Vic. c. 86 s. 13.

28. Whether the plaintiff in any suit commenced by bill does or does not require any answer from the defendant or any one or more of the defendants to the bill every defendant may without leave of the court put in a plea answer or demurrer to the plaintiff's bill within the time now allowed to a defendant for demurring alone to a bill or within such other time as shall be fixed by any general order of the Supreme

Supreme Court in that behalf but after that time a defendant not required to answer the plaintiff's bill shall not be at liberty to put in a plea answer or demurrer to the bill without leave of the court or master in equity. Provided that the power of the court to grant further time for pleading answering or demurring to any bill upon the application of any defendant thereto whether required to answer the bill or not shall remain in full force and shall not be in anywise prejudiced or affected. Provided also that if the court or master shall grant any further time to any defendant for pleading answering or demurring to the bill the plaintiff's right to move for a decree under the provisions hereinafter contained shall in the meantime be suspended.

29. The answer of the defendant to any bill of complaint in the said court may contain not only the answer of the defendant to the interrogatories so filed as aforesaid but such statements material to the case as the defendant may think it necessary or advisable to set forth therein and such answer shall be also divided into paragraphs numbered consecutively each paragraph containing as nearly as may be a separate and distinct statement or allegation.

Motion for Dismissal.

30. Where a defendant to a suit in the said court commenced by bill shall not have been required to answer the bill and shall not have answered the same such defendant shall be at liberty to move to dismiss the bill for want of prosecution at such times and under such circumstances and subject to such restrictions as shall be in that behalf prescribed by any general order of the Supreme Court.

Motion for Decree.

31. The plaintiff in any suit commenced by bill shall be at liberty at any time after the time allowed to the defendant for answering the same shall have expired (but before replication) to move the court upon such notice as shall in that behalf be prescribed by any general order of the Supreme Court for such decree or decretal order as he may think himself entitled to and the plaintiff and defendant respectively shall be at liberty to file affidavits in support of and in opposition to the motion so to be made and to use the same on the hearing of such motion and if such motion shall be made after an answer filed in the cause the answer shall for the purposes of the motion be treated as an affidavit.

32. Upon any such motion for a decree or decretal order it shall be discretionary with the court to grant or refuse the motion or to make an order giving such directions for or with respect to the further prosecution of the suit as the circumstances of the case may require and to make such order as to costs as it may think right.

Taking Bills Pro Confesso.

33. And whereas sometimes persons have withdrawn themselves beyond the seas or otherwise absconded to avoid appearing in courts of equity or being served with process for that purpose or being brought into court by *habeas corpus* have refused to appear for remedy of the inconvenience thence ensuing be it further enacted That if in any suit which hath been or hereafter shall be commenced in the court

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Answer to contain not only answers to interrogatories but such other statements as may be deemed necessary and to be divided into numbered paragraphs.

17 Vic. No. 7 s. 14.

2 Pring 1711.

15 & 16 Vic. c. 86

s. 14.

Defendant not having been required to answer and not answering may move for dismissal of bill for want of prosecution.

17 Vic. No. 7 s. 25.

2 Pring 1713.

15 & 16 Vic. c. 86

s. 27.

Plaintiff may on expiry of time for answering move for decree or decretal order.

17 Vic. No. 7 s. 5.

2 Pring 1711.

15 & 16 Vic. c. 86

s. 15.

Affidavits may be filed.

Proceedings thereon.

17 Vic. No. 7 s. 16.

2 Pring 1711.

15 & 16 Vic. c. 86

s. 16.

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Manner of proceeding in case of persons not appearing within the usual time after subpoena or other process has been issued.

11 Geo. IV. & 1 Wm.

IV. c. 36 s. 3.

2 Pring 1660.

court of equity any defendant against whom any subpoena or other process shall issue shall not cause his appearance to be entered upon such process within such time and in such manner as according to the rules of the court the same ought to have been entered in case such process had been duly served and an affidavit or affidavits shall be made to the satisfaction of such court that such defendant is beyond the seas or the colony or that upon inquiry at his usual place of abode he could not be found so as to be served with such process and that there is just ground to believe that such defendant is gone out of the colony or otherwise absconded to avoid being served with the process of such court then and in such case the court out of which such process issued may make an order directing and appointing such defendant to appear at a certain day therein to be named and a copy of such order shall within fourteen days after such order made be inserted in the *Gazette* and published not less than twice in some other Brisbane newspaper and if the defendant shall reside within any other electoral district than that of Brisbane then such copy shall also within one month after such order made be inserted in some newspaper published within such district or nearest thereto if none be published within it and every such notice shall be in such form as the court shall direct and the last of such publications thereof shall in the said several cases be respectively fourteen days or one month at the least before the day on which such defendant shall be directed to appear and a copy of such order shall within the several times aforesaid be posted up in some public place near the place where such defendant made his usual abode such place of abode being also within the jurisdiction of the said court within thirty days next before such his absenting and also a copy of such order shall within the time aforesaid be posted up in some public place at the Town Hall in Brisbane and if the defendant do not appear within the time limited by such order or within such further time as the court shall appoint then on proof made of such publication of such order as aforesaid the court being satisfied of the truth thereof may order the plaintiff's bill to be taken *pro confesso* and make such decree thereupon as shall be thought just and may thereupon issue process to compel the performance of such decree either by an immediate sequestration of the real and personal estate and effects of the party so absenting (if any such can be found) or such part thereof as may be sufficient to satisfy the demands of the plaintiff in the said suit or by causing possession of the estate or effects demanded by the bill to be delivered to the plaintiff or otherwise as the nature of the case shall require and the said court may likewise order such plaintiff to be paid and satisfied his demands out of the estate or effects so sequestered according to the true intent and meaning of such decree such plaintiff first giving sufficient security in such sum as the court shall think proper to abide such order touching the restitution of such estate or effects as the court shall think proper to make concerning the same upon the defendant's appearance to defend such suit and paying such costs to the plaintiff as the court shall order but in case such plaintiff shall refuse or neglect to give such security as aforesaid then the said court shall order the estate or effects so sequestered or whereof the possession shall

shall be decreed to be delivered to remain under the direction of the court either by appointing a receiver thereof or otherwise as to such court shall seem meet until the appearance of the defendant to defend such suit and his paying such costs to the plaintiff as the said court shall think reasonable or until such order shall be made therein as the court shall think just.

34. Provided always that if any person against whom any decree shall be made upon refusal or neglect to enter his appearance or appoint an attorney to act on his behalf shall be in custody or forthcoming so that he may be served with a copy of such decree then he shall be served with a copy thereof before any process shall be taken out to compel the performance thereof.

Persons so neglecting in custody or forthcoming to be served with a copy of the decree.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 4.
2 Pring 1661.

35. Provided also that if any decree shall be made in pursuance of this Act against any person being out of the colony or absconding in manner aforesaid at the time such decree is pronounced and such person shall within seven years after the making such decree return or become publicly visible then and in such case he shall likewise be served with a copy of such decree within a reasonable time after his return or public appearance shall be known to the plaintiff and in case any defendant against whom such decree shall be made shall within seven years after the making such decree happen to die before his or her return into this colony or appearing openly as aforesaid or shall within the time last before mentioned die in custody before his or her being served with a copy of such decree then his or her heir if such defendant shall have any real estate sequestered or whereof possession shall have been delivered to the plaintiff and such heir may be found or if such heir shall be a *femme covert* infant or *non compos mentis* the husband guardian or committee of such heir respectively or if the personal estate of such defendant be sequestered or possession thereof delivered to the plaintiff then his executor or administrator (if any such there be) may and shall be served with a copy of such decree within a reasonable time after it shall be known to the plaintiff that the defendant is dead and who is his heir executor or administrator or where he may be served therewith.

Persons out of the colony affected by such decrees if they return within seven years to be served with a copy or in case of death their heirs &c.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 5.
2 Pring 1661.

36. Provided always that if any person so served with a copy of such decree shall not within six months after such service appear and petition to have the said cause reheard such decree so made as aforesaid shall stand absolutely confirmed against the person so served with a copy thereof his heirs executors and administrators and all persons claiming or to claim by from or under him or any of them by virtue of any act done or to be done subsequent to the commencement of such suit.

Persons not petitioning a rehearing of the cause within six months the decree to be absolutely confirmed.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 6.
2 Pring 1662.

37. Provided always that if any person so served with a copy of such decree shall within six months after such service or if any person not being so served shall within seven years next after the making such decree appear in court and petition to be heard with respect to the matter of such decree and shall pay down or give security for payment of such costs as the court shall think reasonable in that behalf the person so petitioning or his representatives or any person claiming under him by virtue of any act done before the commencement of the suit may be admitted to answer the bill exhibited

Persons petitioning a rehearing within seven years and giving security for costs admitted to answer and the cause to be heard again.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 7.
2 Pring 1662.

and

31 VICTORIA No. 18. and issue may be joined and witnesses on both sides examined and such other proceedings decree and execution may be had thereon as there might have been in case the same party had originally appeared and the proceedings had then been newly begun or as if no former decree or proceedings had been in the same cause.

Persons not appearing within seven years and making such petition to be absolutely barred.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 8.
2 Pring 1662.

38. Provided always that if any person against whom such decree shall be made his heirs executors or administrators shall not within seven years next after the making of such decree appear and petition to have the cause reheard and pay down or give security for payment of such costs as the court shall think reasonable in that behalf such decree made as aforesaid shall stand absolutely confirmed against the person against whom such decree shall be made his heirs executors and administrators and against all persons claiming or to claim by from or under him or any of them by virtue of any act done or to be done subsequent to the commencement of such suit and at the end of such seven years it shall and may be lawful for the court to make such further order as shall be just and reasonable according to the circumstances of the case.

Not to affect persons beyond the seas unless in certain cases.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 9.
2 Pring 1662.

39. Provided always that this Act shall not extend or be construed to extend to warrant or make good any proceeding against any person beyond the seas unless it shall appear to the satisfaction of the court by affidavit or affidavits before the making of such decree that such person had been in Queensland or its dependencies within two years next before the subpoena in such suit issued against such person.

As to courts having a limited jurisdiction.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 10.
2 Pring 1662.

40. Provided also that the provisions hereinbefore contained shall not extend or be construed to extend to warrant or make good any proceeding against any person in any court of equity having a limited jurisdiction unless it shall appear to the satisfaction of such court by affidavit before the making of such decree that such person had resided within the jurisdiction of such court within one year next before the process in such suit issued against such person.

Such bill shall be read in evidence as an answer admitting the facts.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 14.
2 Pring 1663.

41. When and as soon as any such order shall have been pronounced by any such court of equity for taking such bill *pro confesso* such bill in equity or an examined copy thereof so taken *pro confesso* shall be taken and read in any court of law or equity as evidence of the facts and matters and things therein contained in the same manner as if such facts matters and things had been admitted to be true by the answer of the defendant put in to such bill and such bill so taken *pro confesso* shall be received and taken in evidence of such and the same facts and on behalf of such and so many persons as the answer of the defendant to the said bill could and might have been read and received in evidence of in case such answer had been put in by the defendant thereto and had admitted the same facts matters and circumstances as in such bill stated and set forth and in like manner every other bill of discovery taken *pro confesso* under any of the provisions of this Act shall or may be taken and read as evidence of the facts and matters and things therein contained to the extent aforesaid.

Issue.

Issue may be joined by filing replication.
17 Vic. No. 7 s. 24.
2 Pring 1712.
15 & 16 Vic. c. 86 s. 26.

42. In suits in the said court commenced by bill where notice of motion for a decree or decretal order shall not have been given or having been given where a decree or decretal order shall not have been

been made thereon issue shall be joined by filing a replication in the form or to the effect of the replication now in use in the said court and where a defendant shall not have been required to answer and shall not have answered the plaintiff's bill he shall be considered to have traversed the case made by the bill.

Mode and Time of Taking Evidence.

43. When any suit commenced by bill shall be at issue the plaintiff shall within such time thereafter as shall be prescribed in that behalf by any general order of the Supreme Court give notice to the defendant that he desires that the evidence to be adduced in the cause shall be taken upon affidavit and if the plaintiff shall desire the evidence to be adduced upon affidavit and the defendant or some or one of the defendants if more than one shall not within such time as shall be prescribed in that behalf by any general order of the Supreme Court give notice to the plaintiff or his solicitor that he or they desire the evidence to be oral the plaintiff and defendants respectively shall be at liberty to verify their respective cases by affidavit.

Plaintiff where suits by bill at issue may give notice to defendant to adduce evidence orally or by affidavit.
17 Vic. No. 7 s. 26.
2 Pring 1713.
15 & 16 Vic. c. 86 s. 29.

44. Notwithstanding that the general evidence in any suit may have been taken orally affidavits by particular witnesses or affidavits as to particular facts or circumstances may by consent or by leave of the court obtained upon notice be used on the hearing of any cause and such consent with the approbation of the court may be given by or on the part of married women or infants or other persons under disability.

Affidavits as to particular facts &c. may be used.
17 Vic. No. 7 s. 27.
2 Pring 1713.
15 & 16 Vic. c. 86 s. 36.

45. The evidence on both sides in any suit whether taken orally or upon affidavit shall be closed within such time or times after issue joined as now is or hereafter shall in that behalf be prescribed by any general order of the Supreme Court but with power to the court to enlarge the same as it may seem fit and after the time fixed for closing the evidence no further evidence whether oral or by affidavit shall be receivable without special leave of the court. Provided always that any witness who has made an affidavit filed by any party to a cause shall be subject to oral cross-examination within such time after the time fixed for closing the evidence as shall be prescribed in that behalf by any order of the Supreme Court by or before the master in equity in the same manner as if the evidence given by him in his affidavit had been given by him orally before the said master and after such cross-examination may be re-examined orally by or on the part of the party by whom such affidavit was filed and such witness shall be bound to attend before such master to be so cross-examined and re-examined upon receiving due and proper notice and payment of his reasonable expenses in like manner as if he had been duly served with a writ of *subpoena ad testificandum* before such master and the expenses attending such cross-examination and re-examination shall be paid by the parties respectively in like manner as if the witness so to be cross-examined were the witness of the party cross-examining and shall be deemed costs in the cause of such parties respectively unless the court shall otherwise direct.

Evidence on both sides to be closed within time prescribed by general order.
17 Vic. No. 7 s. 28.
2 Pring 1713.
15 & 16 Vic. c. 86 s. 38.

Witnesses by affidavit subject to oral cross-examination.

46. Upon the hearing of any cause commenced by bill the court if it shall see fit so to do may require the production and oral examination before itself of any witness or party in the cause and

Court may require examination before itself of any witness.
17 Vic. No. 7 s. 29.
2 Pring 1713.

31 VICTORIÆ No. 18. may direct the costs of and attending the production and examination of such witness or party to be paid by such of the parties to the suit or in such manner as it may think fit.

15 & 16 Vic. c. 86
s. 39.

Evidence subsequent
to hearing.

17 Vic. No. 7 s. 31.

2 Pring 1714.

15 & 16 Vic. c. 86
s. 4.

47. In cases where it shall be necessary for any party to any cause depending in the said court to go into evidence subsequently to the hearing of such cause or on any reference to the master such evidence shall be taken as nearly as may be in the same manner as evidence with a view to such hearing.

Examination of Defendants.

In the court of equity
defendant may be
examined on behalf
of the plaintiff or any
co-defendant.

8 Vic. No. 1 s. 1.

1 Pring 567.

48. In the court of equity any defendant to any cause pending in such court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause saving just exceptions and any interest which such defendant so to be examined may have in the matters or any of the matters in question in the cause shall not be deemed a just exception to the testimony of such defendant but shall only be considered as affecting or tending to affect the credit of such defendant as a witness.

Affidavits on Hearing and Further Directions.

Power for court not-
withstanding any
rule &c. to the con-
trary to receive proof
by affidavit.

16 Vic. No. 3 s. 26.

2 Pring 1693.

13 & 14 Vic. c. 35
s. 26.

49. Notwithstanding any rule or practice of the said court to the contrary it shall be lawful for the said court at the hearing of any cause or of any further direction therein to receive proof by affidavit of all proper parties being before the court and of all such matters as are necessary to be proved for enabling the said court to order payment of any moneys belonging to any married woman and of all such other matters not directly in issue in the cause as in the opinion of the said court may safely and properly be so proved.

Limited commissions.

11 Geo. IV. & 1

Wm. IV. c. 36 s. 15
clause 20.

2 Pring 1669.

50. In order to relieve persons in prison from the expense of a master's attendance to take affidavits or answers the Chief Justice may in his discretion by one or more commission or commissions under the seal of the court upon or in respect of which no fee shall be payable nominate and appoint the warden keeper or other chief officer of any prison within the colony and their deputies to be commissioners of the Supreme Court in equity for the purpose of taking and receiving such affidavits and answers as any person or persons within any such prison shall be willing or desirous to make and for no other purpose and the person so taking such affidavit or answer shall in respect thereof be entitled to receive a fee of one shilling and no more.

Evidence on Motions Petitions. &c.

Any party in a cause
may by subpoena re-
quire attendance of
any witness.

17 Vic. No. 7 s. 30.

2 Pring 1713.

15 & 16 Vic. c. 86
s. 40.

51. Any party in any cause or matter depending in the said court may by a writ of *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before the master in equity or before a commissioner specially appointed for the purpose and examine such witness orally for the purpose of using his evidence upon any motion petition or other proceeding before the court in like manner as such witness would be bound to attend and be examined with a view to the hearing of a cause and any party having made an affidavit to be used or which shall be used on any motion petition or other proceeding before the court shall be bound on being served with such writ to attend before the court master in equity or a commissioner for the purpose of being cross-examined Provided always that

Parties who have de-
posed by affidavit
bound to attend for
cross-examination if
required.

that the court shall always have a discretionary power of acting upon such evidence as may be before it at the time and of making such interim orders or otherwise as may appear necessary to meet the justice of the case. 31 VICTORIA No. 18.

52. Upon application by motion or petition to the court in any suit depending therein for an injunction or a receiver or to dissolve an injunction or discharge an order appointing a receiver the answer of the defendant shall for the purpose of evidence on such motion or petition be regarded merely as an affidavit of the defendant and affidavits may be received and read in opposition thereto. Answer of defendant on motion for injunction &c. to be regarded as an affidavit. 17 Vic. No. 7 s. 47. 2 Pring 1718. 15 & 16 Vic. c. 86 s. 59.

Evidence taken out of the Jurisdiction.

53. All pleas answers disclaimers examinations affidavits declarations affirmations and attestations of honor in causes or matters depending in the Supreme Court in equity may be sworn and taken in any place out of this colony under the dominion of Her Majesty before any judge court notary public or person lawfully authorised to administer oaths at such place or before any of Her Majesty's consuls or vice-consuls in any place out of Her Majesty's dominions and the judges and other officers of the said Supreme Court shall take judicial notice of the seal or signature as the case may be and authority of any such court judge notary public person consul or vice-consul attached appended or subscribed to any such plea answer disclaimer examination affidavit affirmation attestation of honor declaration or other document to be used in the said court. Pleas declarations &c. how to be sworn and taken in places out of this colony. 17 Vic. No. 7 s. 21. 2 Pring 1712. 15 & 16 Vic. c. 86 s. 22.

Scientific Assistance.

54. It shall be lawful for the Supreme Court or any judge thereof in such way as they may think fit to obtain the assistance of conveyancing counsel accountants merchants engineers actuaries or other scientific persons the better to enable such court or judge to determine any matter at issue in any cause or proceeding depending in the equity jurisdiction of the court and to act upon the certificate of such persons. Court in equity may obtain assistance of scientific persons and others. 27 Vic. No. 14 s. 8. 3 Pring 314. 15 & 16 Vic. c. 80 s. 42.

55. The allowances in respect of fees to such conveyancing counsel accountants merchants engineers actuaries and other scientific persons shall be regulated by the taxing officer of the said court subject to an appeal to any judge whose decision shall be final. Fees to such persons. 27 Vic. No. 14 s. 9. 3 Pring 314. 15 & 16 Vic. c. 80 s. 43.

Jury.

56. It shall be lawful for the Supreme Court in equity if it shall think fit to cause the amount of such damages as hereinafter mentioned in any case to be assessed or any question of fact arising in any suit or proceeding to be tried by a special or common jury before the court itself and the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for such assessment of damages or the trial of such question of fact as may be made by the said court in its common law jurisdiction and may also make any other orders which to the said court in equity may seem requisite and every such jury shall consist of persons possessing the qualifications and shall be struck summoned balloted for and called in like manner as if such jury were a jury for the trial of
of

31 VICTORIA No. 18. of any cause in the said court in its common law jurisdiction and every juryman so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in the said Supreme Court in its common law jurisdiction and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause and generally for all purposes of or auxiliary to the assessment of damages or the trial of questions of fact by a jury before the court itself and in respect of new trials the said court in equity shall have the same jurisdiction powers and authority in all respects as belong to the said court in its common law jurisdiction or to any judge thereof for the like purposes Provided that from any order made by the court on an application made for a new trial there shall be the same right of appeal as from any other order of the court.

Questions ordered to be tried by jury to be reduced into writing.
27 Vic. No. 14 s. 12.
3 Pring 314.
21 & 22 Vic. c. 27 s. 4.

57. Any question of fact and any question as to the amount of damages which shall be so ordered to be tried by a jury before the court itself shall be reduced into writing in such form as the court shall direct and at the trial the jury shall be sworn to try the said question and a true verdict to give thereon according to the evidence and upon every such trial the said court in equity shall have the same powers jurisdiction and authority as belong to any judge of the said Supreme Court sitting at *nisi prius*.

Damages may be assessed or questions of fact tried before the court itself without a jury.
27 Vic. No. 14 s. 13.
3 Pring 314.
21 & 22 Vic. c. 27 s. 5.

58. It shall also be lawful for the said court in equity if it shall think fit to cause the amount of such damages in any case to be assessed or any question of fact arising in any suit or proceeding to be tried before the court itself without a jury and to cause the evidence on the trial of that question to be taken by the oral examination of witnesses and other proofs in open court and any question of fact and any question as to the amount of damages which shall be so ordered to be tried before the court itself shall be reduced into writing in such form as the court shall direct and the verdict of the judge shall be of the same effect as the verdict of a jury under this Act and the proceedings upon and after such trial as to the power of the court the evidence and otherwise shall be the same as in the case of trial by jury under this Act Provided that in the case of a trial under this or the section last but one preceding any person may apply for a new trial either to the judge before whom the trial was had or to the said court sitting in banco.

Damages may be assessed by jury before judge of Supreme Court at *nisi prius* or before a sheriff.
27 Vic. No. 14 s. 14.
3 Pring 315.
21 & 22 Vic. c. 27 s. 6.

59. It shall also be lawful for the said court in equity in any case in which it shall think fit so to do to cause the amount of such damages to be assessed or any such question of fact to be tried by a jury before any judge of the Supreme Court at *nisi prius* or at the assizes or a district court judge or before the sheriff or any deputy sheriff and for that purpose to issue a precept to the district court judge or to the sheriff or such deputy sheriff as the said court in equity shall think fit or where the sheriff or deputy sheriff is interested then to an elisor or commissioner of the said court requiring him to return summon and impanel a common or special jury for the purpose aforesaid in like manner as is done in cases of writs of inquiry at common law which are to be executed before a judge or before the sheriff and the said court

court in equity shall have power to set aside the verdict or inquisition on such inquiry and to direct a new inquiry in such manner and on such terms as the court shall think fit. 31 VICTORIA No. 18.

Injunction.

60. The practice of the Supreme Court with respect to injunctions for the stay of proceedings at law shall so far as the nature of the case will admit be assimilated to the practice of such court with respect to special injunctions generally and such injunctions may be granted upon interlocutory applications supported by affidavit in like manner as other special injunctions are granted by the said court. Practice as to injunctions to stay proceedings at law. 17 Vic. No. 7 s. 46. 2 Pring 1718. 15 & 16 Vic. c. 86 s. 58.

61. Where any party obstinately retains possession of lands or other real property after a writ of execution of a decree or an order for delivery of possession has been duly served and demand of possession made and upon an affidavit of such service of the writ of execution and of such demand made thereunder and a refusal to comply therewith on the part of the person against whom the writ issued the party issuing it shall be at liberty upon an affidavit of service of the writ of execution and demand of possession and refusal to obtain the usual order of course for the writ of assistance to issue and that the intermediate writs of attachment and injunction further commanding the party to deliver possession or any other writ shall be unnecessary. Writ of possession. 11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 clause 19. 2 Pring 1669.

Damages.

62. In all cases in which the Supreme Court in equity has jurisdiction to entertain an application for an injunction against a breach of any covenant contract or agreement or against the commission or continuance of any wrongful act or for the specific performance of any covenant contract or agreement it shall be lawful for the same court if it shall think fit to award damages to the party injured either in addition to or in substitution for such injunction or specific performance and such damages may be assessed in such manner as the court shall direct. Power to court in equity to award damages in certain cases. 27 Vic. No. 14 s. 10. 3 Pring 314. 21 & 22 Vic. c. 27 s. 2.

Covenant to Insure.

63. A court of equity shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened and the breach has in the opinion of the court been committed through accident or mistake or otherwise without fraud or gross negligence and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure upon such terms as to the court may seem fit. Relief against forfeiture for breach of covenant to insure in certain cases. 22 & 23 Vic. c. 35 s. 4.

64. The court where relief shall be granted shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise. Record of relief granted. 22 & 23 Vic. c. 35 s. 5.

65. The court shall not have power under this Act to relieve the same person more than once in respect of the same covenant or condition nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of court in favor of the person seeking the relief. Court not to relieve more than once in respect of the same covenant. 22 & 23 Vic. c. 35 s. 6.

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Lessor to have benefit of an informal insurance.
22 & 23 Vic. c. 35 s. 7.

66. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall on loss or damage by fire happening have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected by the lessee or mortgagor in respect of his interest under the lease or in the property or by any person claiming under him but not effected in conformity with the covenant as he would have from an insurance effected in conformity with the covenant.

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.
22 & 23 Vic. c. 35 s. 8.

67. Where on the *bonâ fide* purchase after the coming into operation of this Act of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire the purchaser is furnished with the written receipt of the person entitled to receive the rent or his agent for the last payment of rent accrued due before the completion of the purchase and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

Preceding provisions to apply to leases for a term of years absolute &c.
22 & 23 Vic. c. 35 s. 9.

68. The preceding provisions shall be applicable to leases for a term of years absolute or determinable on a life or lives or otherwise and also to a lease for the life of a lessee or the life or lives of any other person or persons.

Legal Titles.

Court may determine legal titles.
17 Vic. No. 7 s. 49.
2 Pring 1718.
15 & 16 Vic. c. 86 s. 62.

69. In cases where according to the previous practice of the court in its equity jurisdiction such court declined to grant equitable relief until the legal title or right of the party or parties seeking such relief shall have been established in a proceeding at law the said court may itself determine such title or right without requiring the parties to proceed at law to establish the same.

Illusory Appointments.

Illusory appointments shall be valid in equity as well as at law.
11 Geo. IV. & 1 Wm. IV. c. 46 s. 1.
2 Pring 1671.

70. No appointment made or which shall be made in exercise of any power or authority to appoint any property real or personal amongst several objects shall be invalid or impeached in equity on the ground that an unsubstantial illusory or nominal share only shall be thereby appointed to or left unappointed to devolve upon any one or more of the objects of such power but every such appointment shall be valid and effectual in equity as well as at law notwithstanding that any one or more of the objects shall not thereunder or in default of such appointment take more than an unsubstantial illusory or nominal share of the property subjected to such power.

Not to affect any deed which declares the amount of the share.
11 Geo. IV. & 1 Wm. IV. c. 46 s. 2.
2 Pring 1671.

71. Provided always that nothing in this Act contained shall prejudice or affect any provision in any deed will or other instrument creating any such power as aforesaid which shall declare the amount of the share or shares from which no object of the power shall be excluded.

72. Provided

72. Provided also that nothing in this Act contained shall be construed deemed or taken at law or in equity to give any other validity force or effect to any appointment than such appointment would have had if a substantial share of the property affected by the power had been thereby appointed to or left unappointed to devolve upon any object of such power.

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Nor to give any other force to any appointment than the same would have had.
11 Geo. IV. & 1 Wm. IV. c. 64 s. 3.
2 Pring 1671.

Declarations.

73. No suit shall be open to objection on the ground that a merely declaratory decree or order is sought thereby and it shall be lawful for the court to make binding declarations of right without granting consequential relief.

Suit may be for declaratory order only.
17 Vic. No. 7 s. 39.
2 Pring 1716.
15 & 16 Vic. c. 86 s. 50.

Directions.

74. It shall be lawful for the court in any suit for the foreclosure of the equity of redemption in any mortgaged property upon the request of the mortgagee or of any subsequent encumbrancer or of the mortgagor or any person claiming under them respectively to direct a sale of such property instead of a foreclosure of such equity of redemption on such terms as the court may think fit to direct and if the court shall so think fit without previously determining the priorities of encumbrances or giving the usual or any time to redeem provided that if such request shall be made by any such subsequent encumbrancer or by the mortgagor or by any person claiming under them respectively the court shall not direct any such sale without the consent of the mortgagee or the persons claiming under him unless the party making such request shall deposit in court a reasonable sum of money to be fixed by the court for the purpose of securing the performance of such terms as the court may think fit to impose on the party making such request.

Court may direct sale of mortgaged property instead of foreclosure.
17 Vic. No. 7 s. 37.
2 Pring 1716.
15 & 16 Vic. c. 86 s. 48.

75. It shall be lawful for the court in any case where any account is required to be taken to give such special directions if any as it may think fit with respect to the mode in which the account should be taken or vouched and such special directions may be given either by the decree or order directing such account or by any subsequent order or orders upon its appearing to the court that the circumstances of the case are such as to require such special directions and particularly it shall be lawful for the court in cases where it shall think fit so to do to direct that in taking the account the books of account in which the accounts required to be taken have been kept or any of them shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised.

Where account required to be taken court may give special directions as to the mode of taking same.
17 Vic. No. 7 s. 43.
2 Pring 1717.
15 & 16 Vic. c. 86 s. 54.

76. If after a suit shall have been instituted in the said court in its equitable jurisdiction in relation to any real estate it shall appear to the court that it will be necessary or expedient that the said real estate or any part thereof should be sold for the purposes of such suit it shall be lawful for the said court to direct the same to be sold at any time after the institution thereof and such sale shall be as valid to all intents and purposes as if directed to be made by a decree or decretal order on the hearing of such cause and any party to the suit in possession of such estate or in receipt of the rents and profits thereof shall

Court may order real estate to be sold if required.
17 Vic. No. 7 s. 41.
2 Pring 1718.
15 & 16 Vic. c. 86 s. 55.

31 VICTORIA No. 18. shall be compelled to deliver up such possession or receipt to the purchaser or such other person as the court shall direct.

Where property is the subject of proceedings court may allow to parties the annual income.
17 Vic. No. 7 s. 45.
2 Pring 1718.
15 & 16 Vic. c. 86 s. 57.

77. Where any real or personal property shall form the subject of any proceedings in the Supreme Court in equity and the court shall be satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such suit it shall be lawful for the said court at any time after the commencement of such proceedings to allow to the parties interested therein or any one or more of them the whole or part of the annual income of such real property or a part of such personal property or a part or the whole of the income thereof up to such time as the said court shall direct and for that purpose to make such orders as may appear to the said court necessary or expedient.

Heir or devisee of real estate not to claim payment of mortgage out of personal assets.
19 Vic. No. 1.
1 Pring 563.

78. When any person shall after the thirty-first of December one thousand eight hundred and fifty-five have died seized of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death have been charged with the payment of any sum or sums of money by way of mortgage and such person shall not by his will or deed or other document have signified any contrary or other intention the heir or devisee to whom such land or hereditaments shall descend or be devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person but the land or hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all mortgage debts with which the same shall be charged every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof. Provided always that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise. Provided also that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will deed or document made before the first day of January one thousand eight hundred and fifty-six.

Not to affect rights claimed under any will &c. before 1st January 1856.

Transaction of Business by the Registrar and by the Accountant-General.

Interpretation of "property."
G. O. Ang. 21 1863.
c. xlii. cl. 1.

79. By "property" in the five sections next succeeding shall be meant notes orders bonds stock certificates for stock deposits securities tallies chattels and other effects and by "particulars" of any document or property shall be meant its nature number date and sum or other convenient description.

Money and property to be paid and delivered into the bank.
12 Geo. I. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Ang. 21 1863
c. xlii. cl. 2.

80. All moneys and property either before at or after the hearing of any cause to be hereafter directed to be taken under the care of or to be brought before or delivered in or paid to any officer of the court in equity shall not be actually brought before delivered or paid to such officer but when any moneys and property are ready to be delivered or paid in in obedience to any such order such officer shall on application by the party interested or his solicitor in the cause certify the date of such order and the moneys and property then to be paid or delivered in upon such order and the name of the cause to the account

account of which the same is to be placed and upon the said party or his solicitor delivering such certificate and paying and delivering such moneys and property into the bank the same shall be entered causewise in the accountant-general's account in the bank and be under the regulations hereinafter prescribed.

81. When any money belonging to the suitors of the court received by the bank shall be directed to be paid by order of the court the solicitor in the cause shall carry the order to the accountant-general who shall forthwith make a certificate thereof which certificate such solicitor shall forthwith file and the accountant-general shall by note under his hand draw on the bank for so much money as shall be so directed to be paid upon cheque paper fairly written and signed by the accountant-general which note of the accountant-general shall be carried to the registrar's office and with it the order whereby such payment was directed to be made and an entry of the said note and a memorandum that it was drawn by virtue of such order shall be made in the accountant-general's book to be kept at the said office and thereupon the words "entered" and the date of such entry shall be written on the note and signed by the registrar which note so entered and signed shall be sufficient authority to the bank to pay such money to the person mentioned in such note or to such person as he or she by indorsement shall order to receive the same as likewise to write off the same from such accountant-general's account there. But when any sum of money shall be directed to be paid to any suitor out of such money to be received by the bank for interest or maintenance the accountant-general shall by note under his hand upon cheque paper without any certificate draw on the bank for the same and such note being signed by the accountant-general and entered in the accountant-general's book aforesaid and countersigned by the registrar as is before directed shall be a proper authority to the bank to pay the same.

82. When any property deposited or to be deposited in the bank shall be directed by order of court to be delivered out the registrar shall certify to the accountant-general what property is to be delivered out together with the particulars of such property and the name of the cause wherein the same is to be delivered out which certificate the solicitor in the cause shall deliver to the accountant-general who shall countersign the same and such certificate so countersigned shall be a proper authority for the bank to deliver over such property and enter the delivery of such property in the accountant-general's account causewise and it shall be the duty of the accountant-general to supervise such entry and to certify the same into the registrar's office there to be filed and the registrar shall make entries according to such certificate in the accountant-general's book of the delivering out such property as aforesaid.

83. The bank shall (so far as may be practicable) receive all interest and dividends due upon such moneys and property and the accountant-general shall (so far as may be practicable) for that purpose by a proper authority authorise and empower one of the cashiers of the bank to receive the same and from time to time such interest of money and dividends of property shall be entered in the accountant-general's account to be kept with the bank and the

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Suitors' money in bank to be paid by order of the court.
12 Geo. 1. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 3.

When property deposited in bank ordered to be delivered out registrar shall certify.
12 Geo. 1. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 4.

Bank to receive interest &c. and the same to be interest &c. in accountant-general's account.
12 Geo. 1. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 5.

accountant-general

31 VICTORIA No 18. accountant-general shall at the end of every term draw out of his book at the bank an account in writing of the interest and dividends so received and entered in his account and enter the same causewise in his book at the registrar's office.

Party paying money or delivering property shall take a certificate from cashier of bank.
12 Geo. I. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 6.

84. When any money shall be paid or property delivered into the bank pursuant to the directions as aforesaid the party so paying such money or delivering in such property shall take a certificate from one of the cashiers of the bank of his paying and delivering in of the same (specifying particulars) and of their being placed to the accountant-general's account and shall carry such certificate to the accountant-general who shall thereupon make his report of the payment of such money or delivery of such property into the bank and file the same at the registrar's office and the registrar shall enter the same in the accountant-general's book causewise and place the same to the account of the accountant-general.

Money directed to be laid out in Government securities same to be specified in order.
12 Geo. I. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 7.

85. When any money shall hereafter be directed to be laid out on Government securities the species of the particular securities in which the same shall be directed to be invested shall for the future be mentioned in the order and the same shall be delivered in at the bank and of such delivery a certificate (specifying particulars) shall be given to the accountant-general by one of the cashiers of the bank and proper entries thereof shall be made in the account of the accountant-general and if any such securities shall be transferred to the accountant-general he shall make a declaration of trust thereof either thereon or in the books in which the transfer is registered that the same are subject to the orders of the court and shall take a certificate thereof from the proper officer and likewise enter the same into his book at the bank that the bank may receive the dividends thereupon and shall also make a report of all such securities which certificate and report shall be filed at the registrar's office and therein mention and specify the particulars of such securities and of the time of the transfer thereof to him and the registrar is to enter the particulars (nature dates sums numbers or other convenient description) of the securities in such report in the accountant-general's book kept in the office.

When securities ordered to be transferred to suitors registrar shall certify.
12 Geo. I. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
c. xlii. cl. 8.

86. When any such securities (of which the accountant-general shall declare trusts for any of the suitors) shall be ordered to be transferred by the accountant-general to the suitors the registrar shall certify under his hand to the accountant-general what security he is by such order to transfer and to whom which certificate the solicitor in the cause shall carry to the accountant-general who shall within one week or at the then next practicable time attend in person and deliver such certificate to the proper person and transfer such securities or give sufficient authority to some other person to do so.

Such certificate to be authority to proper officer to transfer.
12 Geo. I. c. 32.
Orders of the 26th May and 4th November 1725.
G. O. Aug. 21 1863
cl. 9.

87. Such certificate shall be an authority to the proper officer to permit the accountant-general or other persons by him lawfully authorised to transfer such securities of which transfer the accountant-general shall make his report and procure the same to be filed in the office and the transfer of such securities shall be certified by the accountant-general to the bank in order that such securities may be discharged out of the account of the accountant-general there.

88. The

88. The accountant-general shall be appointed by a general rule of the court. 31 VICTORIA No. 18.

89. From and after the death or removal of any accountant-general all mortgages tallies orders stocks annuities and other transferable securities vested in him at the time of such his death or removal in trust for the suitors of the said court shall vest in the succeeding accountant-general for the same estates and interests as he then had therein and subject to the same trusts without any assignment or transfer whatsoever and upon such death or removal of any accountant-general all moneys deposits and effects of the suitors of the said court for which he shall then have credit in his account with the bank shall be carried to the account of the succeeding accountant-general.

Appointment of
accountant-general
by rule of court.
G. O. Aug. 21 1863
c. xlii. cl. 10.

After death &c. of
accountant the secu-
rities vested in his
successor.
12 Geo. I. c. 32 s. 7.

90. And to the end that all misapplications or wastings of the subjects' money by any officer of the Supreme Court may be entirely prevented for the future be it therefore further enacted by the authority aforesaid That the said accountant-general shall not meddle with the actual receipt of any of the money or effects of the suitors but shall only keep the account with the bank and the said accountant-general observing the rules hereby prescribed or hereafter to be prescribed to him by the said court shall not be answerable for any money or effects which he shall not actually receive and the bank shall be answerable for all the moneys and effects of the suitors which are or shall be actually received by them.

Accountant not to
meddle with the
suitors' money but
only keep account
with the bank.
21 Geo. I. c. 32 s. 8.

Cash and Property under Control of Court.

91. It shall be lawful for the judges of the Supreme Court or a majority of them whereof the Chief Justice shall be one to make such general orders from time to time as to the investment of cash under the control of the court in such stocks funds or securities as they shall see fit and it shall be lawful for them to make such orders as they shall deem proper for the conversion of any stocks funds or securities now standing or which may hereafter stand in the name of the accountant-general of the said Supreme Court in trust in any cause or matter into any such other stocks funds or securities upon which by any such general order as aforesaid cash under the control of the court may be invested all orders for such conversion of stocks funds or securities into other stocks funds or securities to be made upon petition to be presented by any of the parties interested in a summary way and such parties shall be served with notice thereof as the court shall direct.

Power to judges to
make general orders
as to investment of
cash under the con-
trol of the court.
23 & 24 Vic. c. 38 s. 10.
27 Vic. No. 14 s. 20.
2 Pring 316.

92. When any such general order as aforesaid shall have been made it shall be lawful for trustees executors or administrators having power to invest their funds upon stocks funds or securities or any of them to invest such trust funds or any part thereof in any of the stocks funds or securities in or upon which by such general order cash under the control of the court may from time to time be invested.

Trustees &c. to invest
trust funds in stock
&c. in which cash
under the control of
the court may be
invested.
23 & 24 Vic. c. 38 s. 11.
Vide Trustees Act
s. 86.

Special Case.

93. It shall be lawful for persons interested or claiming to be interested in any question cognizable in the said court as to the construction of any Act of Parliament Act of Council will deed or other instrument in writing or any article clause matter or thing therein

Power to persons in-
terested in questions
to state special cases
for the opinion of the
court.
16 Vic. No. 3 s. 1.
2 Pring 1689.

31 VICTORIE No. 18. therein contained or as to the title or evidence of title to any real or personal estate contracted to be sold or otherwise dealt with or as to the parties to or the form of any deed or instrument for carrying any such contract into effect or as to any other matter falling within the jurisdiction of the said court as a court of equity or in infancy or lunacy or made subject to the jurisdiction or authority of the said court as a court of equity by any statute or Act of Council and including among such persons all lunatics married women and infants in the manner and under the restrictions hereinafter contained to concur in stating such question in the form of a special case for the opinion of the said court and it shall also be lawful for all executors administrators and trustees to concur in such case.

Case to be signed by counsel and filed and appearances entered by defendants.
16 Vic. No. 3 s. 10.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 10.

94. Every such special case shall be signed by counsel for all parties and shall be filed in the same manner as bills are filed and the defendants may appear thereto in the same manner as defendants appear to bills and no defendant shall be required to take an office copy of a special case but an office copy thereof shall be taken by the plaintiff.

After case filed and appearance by defendant parties to be bound except that married women infants and lunatics are not to be bound by statements in case till leave given to set it down.
16 Vic. No. 3 s. 11.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 11.

95. After a special case shall have been filed and the defendants shall have appeared thereto all the parties to such special case shall be subject to the jurisdiction of the court in the same manner as if the plaintiff in the special case had filed a bill against the parties named as defendants thereto and such defendants had appeared to such bill and upon the special case being filed and appearances entered thereto as aforesaid all parties to such special case other than married women infants and lunatics shall for the purposes of such special case be bound by the statements therein and married women infants and lunatics made parties to a special case shall for the purposes of such special case be bound by the statements therein when and not before leave shall have been given by the court to set down such special case in manner hereinafter provided.

How such special cases to be entitled.
16 Vic. No. 3 s. 7.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 7.

96. Every such special case shall be entitled as a cause between some or one of the parties interested or claiming to be interested as plaintiffs or plaintiff and the others or other of them as defendants or defendant and in the title to such cases lunatics and infants shall be described as such and their committees guardians or special guardians named and where in any such case a married woman is named as a plaintiff and her husband as a defendant thereto a next friend of such married woman shall be named in the title to such case.

Form of special case.
16 Vic. No. 3 s. 8.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 8.

97. Every such special case shall concisely state such facts and documents as may be necessary to enable the court to decide the question raised thereby and upon the hearing of such case the court and the parties shall be at liberty to refer to the whole contents of such documents and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference which the court might have drawn therefrom if proved in a cause.

Case to state how guardian constituted and the concurrence of married woman.
16 Vic. No. 3 s. 9.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 9.

98. Every such special case to which an infant or lunatic is a party by his guardian or special guardian shall also state how such guardian or special guardian was constituted and where any married woman having or claiming any interest distinct from her husband is a party to such case it shall be stated therein that she concurs in such case in her own right.

Parties

Parties to Case under Disabilities.

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99. A husband interested or claiming to be interested in right of his wife in any such question as aforesaid may concur in such case in his own name and in the name of his wife where the wife has no claim to any interest distinct from her husband and a married woman having or claiming any interest in any such question as aforesaid distinct from her husband may in her own right concur in such case provided that her husband also concurs therein.

How married woman may concur.
16 Vic. No. 3 s. 3.
2 Pring 1689.
13 & 14 Vic. c. 35 s. 3.

100. The guardian of any infant interested or claiming to be interested in any such question as aforesaid may concur in such case in the name and on the behalf of the infant unless such guardian has an interest in such question adverse to the interest of the infant therein.

How infant may concur.
16 Vic. No. 3 s. 4.
2 Pring 1689.
13 & 14 Vic. c. 35 s. 1.

101. The committee of the estate of any lunatic interested or claiming to be interested in any such question as aforesaid may after having been authorised in that behalf by the judge acting as primary judge in equity concur in such case in his own name and in the name and on the behalf of the lunatic.

How lunatic may concur.
16 Vic. No. 3 s. 2.
2 Pring 1689.
13 & 14 Vic. c. 35 s. 2.

102. It shall be lawful for the said court by order to be made in the matter of any lunatic not found such by inquisition or in the matter of any infant upon the application of any person on the behalf of such lunatic or upon the application of such infant by motion or petition to appoint any person shown by affidavit to be a fit person and to have no interest adverse to the lunatic or infant to be the special guardian of such lunatic or infant for the purpose of concurring in such case in the name and on behalf of the lunatic or infant and any such person so appointed may lawfully so concur Provided always that it shall be lawful for the said court to require notice of such application to be given to such person (if any) as the court shall think fit.

How special guardian to be appointed for a lunatic not found such by inquisition and for infant.
16 Vic. No. 3 s. 5.
2 Pring 1689.
13 & 14 Vic. c. 35 s. 5.

103. In any case in which any such order as aforesaid shall have been made by the said court in the matter of any infant without notice to the guardian of the infant it shall be lawful for the said court if it shall think fit so to do to discharge such order upon the application of such guardian by motion or petition and the said court if it shall think fit may thereupon appoint some other fit person to be the special guardian of such infant for the purpose of such special case and may also give such directions as may be necessary for substituting in such special case either the name of the guardian so applying or of the special guardian so appointed in lieu of the name of the special guardian so displaced Provided always that the discharge of any order appointing a special guardian shall not invalidate anything which shall in the meantime have been done by such special guardian unless the court shall upon notice to all parties specially so direct.

Order to appoint special guardian of infant may be discharged.
16 Vic. No. 3 s. 6.
2 Pring 1689.
13 & 14 Vic. c. 35 s. 6.
If made without notice.

Setting down Case.

104. So soon as all the defendants shall have appeared to the special case the same may subject to the provisions hereinafter contained be set down for hearing and subpoenas to hear judgment issued and served according to the practice of the said court.

How case to be set down for hearing.
16 Vic. No. 3 s. 12.
2 Pring 1690.
13 & 14 Vic. c. 35 s. 12.

105. When

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When a married woman infant or lunatic is a party application to be made to the court for leave to set the case down.

16 Vic. No. 3 s. 13.

2 Pring 1690.

13 & 14 Vic. c. 35 s. 13.

105. When any married woman infant or lunatic is party to a special case application may be made to the court by motion for leave to set down the same of which motion notice shall be given to every party to such case in whom as executor administrator or trustee any property in question therein is or is alleged to be vested in trust for or for the benefit of such married woman infant or lunatic and also if such application be not made by or on behalf of such married woman infant or lunatic to such married woman and her husband or to such infant or to such lunatic and his committee (if any) as the case may be and upon the hearing of such motion the said court may give leave to set down such case if it shall be of opinion that it is proper that the question raised therein shall be determined thereon and shall be satisfied by affidavit or other sufficient evidence that the statements contained therein so far as the same affect the interest of such married woman infant or lunatic are true but otherwise may refuse such application. Provided always that in case the said court upon the hearing of such application shall be of opinion that it is proper that the question raised in such case shall be determined thereon but shall not be satisfied that the statements contained therein so far as they affect the interest of such married woman infant or lunatic are true it shall be lawful for the said court to refer it to one of the masters thereof to make such inquiries as to the court shall seem proper and upon further application being made by motion as aforesaid upon the said master's report to give or refuse leave to set down such case as to the said court shall seem fit.

Declaration Thereon.

Upon hearing court to determine question and make declaration.

16 Vic. No. 3 s. 11.

2 Pring 1691.

13 & 14 Vic. c. 35 s. 14.

106. It shall be lawful for the said court upon the hearing of any such special case as aforesaid to determine the questions raised therein or any of them and by decree to declare its opinion thereon and so far as the case shall admit of the same upon the right involved therein without proceeding to administer any relief consequent upon such declaration and every such declaration of the said court contained in any such decree shall have the same force and effect as such declaration would have had and shall be binding to the same extent as such declaration would have been if contained in a decree made in a suit between the same parties instituted by bill. Provided always that if upon the hearing of such special case as aforesaid the court shall be of opinion that the questions raised thereby or any of them cannot properly be decided upon such case the said court may refuse to decide the same.

Proviso that court may refuse to decide.

Protection afforded to persons acting under declaration.

16 Vic. No. 3 s. 15.

2 Pring 1691.

13 & 14 Vic. c. 35 s. 15.

107. Every executor administrator trustee or other person making any payment or doing any act in conformity with the declaration contained in any decree made upon a special case shall in all respects be as fully and effectually protected and indemnified by such declaration as if such payment had been made or act done under or in pursuance of the express order of the said court made in a suit between the same parties instituted by bill save only as to any rights or claims of any person in respect of matters not determined by such declaration.

Rehearing

Rehearing and Appeal Thereon.

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108. Where any person shall be desirous to have a special case reheard or to appeal from the decision thereon it shall be lawful for the said court upon application for that purpose either at the time of the decree upon such special case being made or at any time afterwards and upon such conditions (if any) as the court shall think fit to order that the declaration contained in such decree shall not be acted upon for such time as the said court shall think just.

The court may suspend the acting upon declaration.
16 Vic. No. 3 s. 16.
2 Pring 1691.
13 & 14 Vic. c. 35 s. 16.

Summary Procedure.

109. It shall be lawful for any person claiming to be a creditor or a specific pecuniary or residuary legatee or the next of kin or some or one of the next of kin of a deceased person to apply for and obtain as of course without bill filed or any other preliminary proceedings a summons from the judge acting as primary judge in equity of the said Supreme Court requiring the executor or administrator as the case may be of such deceased person to attend before him at chambers for the purpose of showing cause why an order for the administration of the personal estate of the deceased should not be granted and upon proof by affidavit of the due service of such summons or on the appearance in person or by his solicitor or counsel of such executor or administrator and upon proof by affidavit of such other matters if any as such judge shall require it shall be lawful for such judge if in his discretion he shall think fit so to do to make the usual order for the administration of the estate of the deceased with such variations if any as the circumstances of the case may require and the order so made shall have the force and effect of a decree to the like effect made on the hearing of a cause between the same parties provided that such judge shall have full discretionary power to grant or refuse such order or to give any special directions touching the carriage or execution of such order and in the case of applications for any such order by two or more different persons or classes of persons to grant the same to such one or more of the claimants or of the classes of claimants as he may think fit and if the judge or the master in equity in case of any reference to him shall think proper the carriage of the order may subsequently be given to such party interested and upon such terms as the judge or master may direct.

Remedy by creditor &c. for administration of personal estate.
17 Vic. No. 7 s. 34.
2 Pring 1715.
15 & 16 Vic. c. 86 s. 45.

110. A duplicate or copy of such summons shall previously to the service thereof be filed in the office of the said master in equity and no service thereof upon any executor or administrator shall be of any validity unless the copy so served shall be stamped with a stamp of such office indicating the filing thereof and the filing of such summons shall have the same effect with respect to *lis pendens* as the filing of a bill.

Copy of summons to be filed.
17 Vic. No. 7 s. 35.
2 Pring 1715.
15 & 16 Vic. c. 86 s. 46.

111. It shall be lawful for any person claiming to be a creditor of any deceased person or interested under his will to apply for and obtain in a summary way in the manner hereinbefore provided with respect to the personal estate of a deceased person an order for the administration of the real estate of a deceased person where the whole of such real estate is by devise vested in trustees who are by the will

Remedy by creditor for administration of real estate.
17 Vic. No. 7 s. 36.
2 Pring 1716.
15 & 16 Vic. c. 86 s. 47.

empowered

31 VICTORIA No. 18. empowered to sell such real estate and authorised to give receipts for the rents and profits thereof and for the produce of the sale of such real estate and all the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person and consequent thereon shall extend and be applicable to an application for such order as last hereinbefore mentioned with respect to real estate.

Executors and Administrators.

Court on application of executors or administrators may by order of course direct it to be referred to a master to take an account of debts and liabilities.
16 Vic. No. 3 s. 19.
2 Pring 1691.
13 & 14 Vic. c. 35 s. 19.

112. And whereas it is expedient to provide means for enabling executors or administrators of deceased persons to ascertain whether there are any outstanding debts or liabilities affecting the personal estates of such persons without the delay and expense of suits to administer such estates it shall be lawful for the said court upon the application of the executors or administrators of any deceased person by order to be made upon motion or petition of course and to be in the form or to the effect set forth in the schedule hereto with such variations as circumstances may require to refer it to the master in equity of the said court to take an account of the debts and liabilities affecting the personal estate of such deceased person and to report thereon Provided always that no such order shall be made until the expiration of one year next after the death of such deceased person or pending any proceedings to administer the estate of such person and that in case at any time after the making of such order any decree or order for administering the estate of such deceased person shall be made it shall be lawful for the said court by such decree or order to stay or suspend the proceedings under such order of course on such terms and conditions if any as to the said court shall seem just.

SCHEDULE REFERRED TO BY THE FOREGOING SECTION.

In the Supreme Court of Queensland.

[Date.]

In the matter of A. B. late of in the county of

banker [or as the case may be] deceased.

10 Vic. No. 3.
2 Pring 1695.

Upon motion this day made unto this court by Mr. of counsel for C. D. of the executor [or administrator] of the above-named A. B. [or upon the humble petition of C. D. of the executor or administrator] of the said A. B. this day preferred unto the said court it is ordered that it be referred to the master in equity of this court to take an account of the debts and liabilities affecting the personal estate of the said A. B. and to compute interest on such of the said debts and liabilities as carry interest after the rate of interest the same respectively carry and the said master is to cause an advertisement to be published in the *Gazette* and such other public papers as he shall think fit for the persons claiming in respect of any such debts or liabilities to come in before the said master and prove their debts and claims and he is to fix a peremptory day for that purpose and such of the said creditors as shall not come in and prove their debts and claims by the time so to be limited are to be excluded the benefit of this order and it is ordered that the said master do distinguish debts from liabilities and liabilities certain from liabilities contingent and it is ordered that the personal estate of the said A. B. be applied in payment and satisfaction of such debts and liabilities of the said A. B. in a due course of administration and for the better taking the said accounts and discovery of the matters aforesaid the parties are to produce before the said master upon oath all deeds books papers and writings in their custody or power relating thereto and are to be examined upon interrogatories as the said master shall direct and any of the parties are to be at liberty to apply to the court as there shall be occasion.

Order to take account of debts &c. of deceased person

113. The order to take an account of the debts and liabilities affecting the personal estate of a deceased person pursuant to the section last preceding may be made immediately or at any time after probate
or

or letters of administration shall have been granted and such order may be made either by the court upon motion or petition of course or by a judge of the said court sitting at chambers upon a summons in the form used for originating proceedings at chambers and after any such order shall have been made the said court or judge may on the application of the executors or administrators by motion or summons restrain or suspend until the account directed by such order shall have been taken any proceedings at law against such executors or administrators by any person having or claiming to have any demand upon the estate of the deceased by reason of any debt or liability due from the estate of the deceased upon such notice and terms and conditions (if any) as to the said court or judge shall seem just and the judge in taking an account of debts and liabilities pursuant to any such order shall on the application of the executors or administrators be at liberty to direct that the particulars only of any claim or claims which may be brought in pursuance to any such order shall be certified by his chief clerk or by the registrar without any adjudication thereon and any notices for creditors to come in which may be published in pursuance of any such order shall have the same force and effect as if such notices had been given by the executors or administrators in pursuance of the fifth section of the "*Trustees and Incapacitated Persons Act of 1867.*"

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under preceding section may be made immediately after probate granted.
23 & 24 Vic. c. 38 s. 14.

114. It shall be lawful for any person who may have come in before the master under any such order and claimed to be a creditor upon the estate of the deceased person or to have any demand upon such estate by reason of any liability and whose debt or claim may not have been wholly allowed by the said master to apply to the said court by motion of which notice shall be given within fourteen days after the filing of the master's report to have such claim allowed by the court either wholly or partially and it shall be lawful for the said executors or administrators and for any creditor of the deceased person who may be authorised by special leave of the said court so to do to apply to the said court by motion of which notice shall be given within the time aforesaid to have any debt or claim allowed by the said master disallowed by the court either wholly or partially and at the expiration of fourteen days after the filing of the said report the same shall except as to any debt or claim as to which any such notice as aforesaid may have been given be absolute as if the same had been confirmed by order of the court.

Master's report may be objected to by motion upon notice.
16. Vic. No. 3 s. 20.
2 Pring 1692.
13 & 14 Vic. c. 35 s. 20.

115. Upon the hearing of any such motion as aforesaid the said court may either dismiss such motion or may order the debt or claim to which such motion relates to be allowed or disallowed as the case may be and either wholly or partially or may direct further inquiry or further proceedings by way of action or otherwise touching such debt or claim and after such inquiry or proceedings may upon further motion deal with such debt or claim as to the said court shall seem just Provided always that no new evidence shall be received by the said court upon the hearing of any such motion without special leave of the said court.

Proceeding of the court on such motion.
16 Vic. No. 3 s. 21.
2 Pring 1692.
13 & 14 Vic. c. 35 s. 21.

116. In case any debt or any certain liability shall have been allowed as aforesaid and shall not within fourteen days after the report has

If debts or certain liabilities allowed be not paid or provided

31 VICTORIE No. 18. has become absolute as to such debt or liability or after the same shall have been allowed by the said court be paid or provided for by appropriation to the satisfaction of the person who has established such liability it shall be lawful for the said court by order to be made in case of any debt remaining due upon the application by motion or petition of the person to whom the debt remains due and on notice to the executors or administrators and in case of any certain liability remaining unprovided for by appropriation upon the application by motion or petition of the person by whom such liability has been established or of the executors or administrators and on notice by the party applying to the other of them to order payment of the debts which may have been allowed and remain unpaid and to provide for the certain liabilities which may have been allowed and remain unprovided for in like manner as the same could or might have been paid or provided for in a suit for that purpose instituted by bill or to refer it to the master to take an account of the debts and certain liabilities allowed as aforesaid which remain unpaid or unprovided for and also the usual accounts of the personal estate of the deceased person with all usual and proper directions and every such order shall have the same force and effect and shall be prosecuted and carried on in like manner as a decree in a creditor's suit instituted by bill.

Court on the application of executors or administrators may direct appropriation of money to answer contingent liability.
16 Vic. No. 3 s. 23.
2 Pring 1693.
13 & 14 Vic. c. 35 s. 23.

117. In case any contingent liability shall be allowed by the said report or by the said court it shall be lawful for the said court by order to be made upon the application of the executors or administrators by motion or petition on notice to the person who may have established such contingent liability to order such sum of money part of the estate of the deceased person as to the said court shall seem just to be set apart and appropriated for answering such contingent liability and to give such directions as the said court shall think fit touching the payment of such sum of money into court and the investment thereof and the payment application or accumulation of the interest or dividends thereof in the meantime and until the same shall be required to answer such liability and when such liability shall be ascertained or determined to give such directions as to the payment of such sum out of court as the said court shall deem right Provided always that no order to be made as aforesaid shall in any manner bind the assets so appropriated as against the persons entitled to the estate of the deceased subject to the contingent liability and any person interested in such appropriated assets may apply to the court touching the same as he may be advised.

Court may restrain proceedings against executors and administrators.
16 Vic. No. 3 s. 24.
2 Pring 1693.
13 & 14 Vic. c. 35 s. 24.

118. After the filing of such report as aforesaid it shall be lawful for the said court upon the application of the executors or administrators of the deceased by order to be made on motion to restrain by injunction any proceedings at law against them by any person having or claiming to have any demand upon the estate of the deceased by reason of any debt or liability other than the persons who may have established contingent liabilities under the said order for which no appropriation may have been made.

Protection afforded to executors and administrators.

119. In case no debt or liability or no debt or liability other than a contingent liability shall have been allowed as aforesaid or in case any debt or liability other than as aforesaid shall have been allowed

allowed as aforesaid then after the same shall have been paid or provided for by appropriation as aforesaid all payments made by the executors or administrators or any of them on account of the estate of the deceased person and all dispositions of such assets made by them on account of such estate shall as against all persons having or claiming to have any demand upon such estate by reason of any debt or liability other than persons who may have established under the said order any contingent liability for which no such appropriation as aforesaid may have been made be as good and effectual as if the same had been made under a decree of the said court. Provided always that nothing herein contained shall in any manner affect or prejudice the rights of any creditor or other person having any demand or claim upon the estate of the deceased against any assets so paid or disposed of or against the persons to whom such payment or disposition may have been made or against any assets appropriated under the provisions of this Act and the appropriation of which if made under a decree of the said court in a suit to which he was not a party would not have been binding upon him.

Contempt.

120. The sheriff shall keep a register of the names of all persons committed by the Supreme Court in equity for contempts stating the dates and the grounds of their several commitments and the dates of their respective discharges and shall in every term make a report to the Supreme Court of the names and descriptions of such prisoners in his custody on each of such days respectively with the causes and dates of their respective commitments.

121. If any defendant by virtue of any writ of *habeas corpus* or other process issuing out of the court in equity shall be brought into court and shall refuse or neglect or being within the walls of any prison in Queensland under or charged with an attachment or other process of contempt shall after fourteen days previous notice in writing requiring him to enter an appearance refuse or neglect to enter his appearance according to the rules or method required by the said court or to appoint an attorney of such court to act on his behalf such court may appoint an attorney of such court to enter an appearance for such defendant and such proceedings may thereupon be had in the cause as if the party had actually appeared.

Persons in Contempt or in Custody.

122. When a writ of attachment shall have duly issued against any defendant for contempt in not answering the bill and such defendant shall not have been taken under such writ and the proper officer shall make a return of *non est inventus* to the same the court shall upon motion by or on behalf of the plaintiff (notice of which shall not be required) order the proper officer attending the court to apprehend such defendant and bring him to the bar of the court to answer his contempt and the same proceedings may thereupon be had as if such order had been made in the manner aforesaid in use. Provided that before such order shall in any such case be made the plaintiff applying for the same shall be required to satisfy the court by the affidavit of the solicitor of the plaintiff or of his town agent if the writ

31 VICTORIA No. 18.
16 Vic. No. 3 s. 25.
2 Pring 1693.
13 & 14 Vic. c. 35
s. 25.

Sheriff to keep a register of persons committed and report four times a year to the court.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 2.
2 Pring 1660.

Defendants brought into court by *habeas corpus* or in custody and refusing to enter appearance court may enter it for them.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 11.
2 Pring 1663.

Unexecuted attachment.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 1.
2 Pring 1661.

31 VICTORIA No. 18. of attachment was issued by such town agent that due diligence was used to ascertain the place where such defendant was at the time of issuing such writ and in endeavoring to apprehend such defendant under the same and that the person suing forth such writ verily believed at the time of suing forth the same that such defendant was in the place into which such writ was issued.

Refusal to answer.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 10.
2 Pring 1666.

123. Where the defendant has been brought to the bar of the court for his contempt in not answering and refuses or neglects to answer (not being idiot lunatic or of unsound mind) the court may upon motion or petition of which due notice shall be given personally to the defendant authorise the plaintiff to amend his bill without such amendment operating as a discharge of the contempt or rendering it necessary to proceed with the process of contempt *de novo* but after such amendment the plaintiff may proceed to take the amended bill *pro confesso* in the same manner as if it had not been amended provided nevertheless that if the defendant shall be desirous to answer such amended bill the court shall allow him such time as shall seem just for that purpose but if he shall not within the time allowed by the court put in a sufficient answer to the amended bill the process for taking the bill *pro confesso* may be resumed and carried on.

Poor defendant.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 14.
2 Pring 1668.

124. Where a defendant is in custody for contempt in not answering and shall be able to put in his answer by borrowing or obtaining a copy of the bill without taking an office copy of the bill he shall not be compellable to take any such copy but the clerk of the court may (if he think the defendant is of sufficient ability to pay for an office copy) require him before the answer is filed to make an affidavit denying his ability in consequence of poverty to pay for an office copy of the bill.

Answer for defendant.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 11.
2 Pring 1667.

125. In every case where the defendant has been brought to the bar of the court to answer his contempt for not answering and shall refuse or neglect to answer within the next twenty-one days the plaintiff shall be at liberty with the leave of the court upon ten days' previous notice to the defendant after the expiration of such twenty-one days unless good cause be shown to the contrary instead of proceeding to have the bill taken *pro confesso* to put in such an answer to the bill as hereinafter is mentioned in the name of the defendant without oath or signature and thereupon the suit shall proceed in the same manner as if such answer were really the answer of the defendant with which the plaintiff was satisfied and the costs of the contempt and of putting in such answer may be provided for in like manner as if the defendant himself had put in such answer and such answer besides the formal parts thereof shall be to the following effect That the defendant leaves the plaintiff to make such proofs of the several matters in the bill alleged as he shall be able or be advised and submits his interests to the court.

Where defendant in contempt for not answering bill is committed or remanded plaintiff may sue out *habeas corpus* and in case of no answer after the court may order bill to be taken *pro confesso*.

126. If any defendant being in contempt for not answering the bill shall have been brought to the bar of the court under process for such contempt and shall have been committed or remanded back to prison the plaintiff may sue forth the writ of *habeas corpus* in the manner and form heretofore in use in the like cases provided that there shall be at least twenty-eight days between the day on which such

such defendant was so committed or remanded back and the return of such writ of *habeas corpus* and upon or after the return of such writ of *habeas corpus* in case such defendant shall not have put in his answer the court shall order the bill to be taken *pro confesso* against such defendant in the same manner as is now usual in the like cases upon the return of a writ of *alias pluries habeas corpus* and such decree shall thereupon be made as shall be thought just.

127. Where a defendant is confined for a misdemeanor and has been brought before the court upon a *habeas corpus* and thereupon has been turned over to any prison *pro formâ* but has been carried back to the prison from whence he came with his cause another writ of *habeas corpus* may issue directed to the gaoler or keeper of the prison to which he has been carried back and thereupon the defendant shall be brought into court and remanded to the prison from whence he came with his cause without being turned over again to any other prison and the bill may be taken *pro confesso* in the same manner in all respects as if the defendant had been all along in the custody of the sheriff at Brisbane.

128. The party prosecuting any contempt shall be at liberty without order to sue forth the several writs in process of contempt returnable immediately in case the party in contempt resides or is in Brisbane or within twenty miles thereof and in other cases the party prosecuting a contempt shall be at liberty without order to sue forth such several writs returnable in vacation provided that there be fifteen days between the teste and the return of each of such writs.

129. If the defendant under process of contempt for not appearing or not answering be in actual custody and shall not have been sooner brought to the bar of the court under process to answer his contempt the plaintiff if the contempt be not sooner cleared shall bring the defendant by a *habeas corpus* to the bar of the court within thirty days from the time of his being actually in custody or detained (being already in custody) upon process of contempt and if the last day of such thirty days shall happen out of term then within the four first days of the ensuing term and where the defendant is in custody of the sheriff or of the messenger upon an attachment or other process the plaintiff shall within ten days after his being taken into such custody or if the last of such ten days shall happen out of term then within the first four days of the next ensuing term cause the defendant to be brought to the bar of the court and in case any such defendant shall not be brought to the bar of the court within the respective times aforesaid the sheriff gaoler or keeper or messenger in whose custody he shall be shall thereupon discharge him out of custody without payment by him of the costs of contempt which shall be payable by the party on whose behalf the process issued and this rule shall apply to every defendant in custody before and at the commencement of this Act who shall not have been brought to the bar of the court but the thirty days allowed in the first abovementioned case and the ten days allowed in the second abovementioned case shall be reckoned from the first day of next term.

130. In any case where upon the application of the plaintiff the court shall be satisfied that justice cannot be done to the plaintiff without

31 VICTORIA No. 19.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 2.
2 Pring 1661.

Where prisoner
turned over *pro*
formâ.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 4.
2 Pring 1665.

The party prosecuting
any contempt may
without order sue
forth the several writs
in process of con-
tempt.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 3.
2 Pring 665.

Defendant in con-
tempt and in custody
if not sooner cleared
plaintiff shall bring
him to the bar of the
court within thirty
days.
11 Geo. IV. & 1 Wm.
IV. c. 36 s. 15 cl. 5.
2 Pring 1665.

Court upon applica-
tion of the plaintiff
may remand.

31 VICTORIA No. 18. without an answer to the bill or to the interrogatories from the defendant himself it shall be lawful for the court to order the defendant to remain in custody until answer or further order but without prejudice to the plaintiff's availing himself of any of the provisions of this Act.

Defendant in custody for contempt for not appearing plaintiff may cause appearance to be entered and after two months may take the bill *pro confesso*.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 12. 2 Pring 1667.

131. Where the defendant is in contempt for not appearing or not answering and in actual custody under process for such contempt or being already in custody shall be detained by an attachment for such contempt and shall not where the contempt is for not appearing enter an appearance within twenty-one days after he is lodged in gaol or prison or the attachment is lodged against him (he being already in prison) as the case may be or where the contempt is for not answering put in an answer within two calendar months after he is lodged in gaol or prison or the attachment is lodged against him he being already in prison the plaintiff shall (as the case may be) within fourteen days after the period computed from the expiration of such twenty-one days within which he may by the provisions of this Act be able to enter such appearance cause an appearance to be entered for the defendant under the powers of this Act and shall at the expiration of such two calendar months proceed to take the bill *pro confesso* and shall accordingly obtain an order for taking the same *pro confesso* within six weeks after the period computed from the expiration of such two calendar months within which he may be able to take the same *pro confesso* or in default of so doing in either of such cases the defendant shall upon application to the court be entitled to be discharged out of custody without paying any of the costs of the contempt unless the court shall under the power hereinbefore contained see good cause to remand and detain the defendant in custody.

Any person in custody for contempt for not executing any deed &c. and after two months still refusing to execute court may order registrar to execute the same.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 15. 2 Pring 1668.

132. When any person shall have been directed by any decree or order to execute any deed or other instrument or make a surrender or transfer and shall have refused or neglected to execute make or transfer the same and shall have been committed to prison under process for such contempt or being confined in prison for any other cause shall have been charged with or detained under process for such contempt and shall remain in such prison the court may upon motion or petition and upon affidavit that such person has after the expiration of two calendar months from the time of his being committed under or charged with or detained under such process again refuse to execute such deed or instrument order or appoint the registrar or if the act is to be done out of Brisbane then if necessary one of the commissioners of the Supreme Court in equity to execute such deed or other instrument or to make such surrender or transfer for and in the name of such person and the execution of the said deed or other instrument and the surrender or transfer made by the said registrar or commissioner shall in all respects have the same force and validity as if the same had been executed or made by the party himself and within ten days after the execution or making of any such deed or other instrument or surrender or transfer notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made and such party as soon as the deed or other instrument surrender or transfer shall be executed made levied or suffered shall be considered as having cleared his

his contempt except as far as regards the payment of the costs of the contempt and shall be entitled to be discharged therefrom under any of the provisions of this Act applicable to his case and the court shall make such order as shall be just touching the payment of the costs of or attending any such deed surrender instrument or transfer.

133. Where a person shall be committed for a contempt in not delivering to any person or persons or depositing in court or elsewhere as by any order may be directed books papers or any other articles or things any sequestrator or sequestrators appointed under any commission of sequestration shall have the same power to seize and take such books papers writings or other articles or things being in the custody or power of the person against whom the sequestration issues as they would have over his own property and thereupon such articles or things so seized and taken shall be dealt with by the court as shall be just and after such seizure it shall be lawful for the court upon the application of the prisoner or of any other person in the cause or matter or upon any report to be made in pursuance of this Act to make such order for the discharge of the prisoner upon such terms and if it shall see fit making any costs in the cause as to the court shall seem proper.

A person committed for contempt for not delivering up books &c. any sequestrator may seize the same.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 16.
2 Pring 1663.

134. In any other case of a commitment for contempt not herein specially provided for the court may upon any such application as last aforesaid or upon any such report as aforesaid make such order for the discharge of the prisoner upon any such terms and making if the court shall see fit any costs in the cause as to the court shall seem proper.

Other cases of contempt court may order discharge upon terms.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 17.
2 Pring 1669.

135. Where any person committed for a contempt shall be entitled to his discharge upon applying to the court but shall omit to make such application the court may upon any such report as aforesaid compulsorily discharge such person from the contempt and from custody and pay the costs of the contempt out of any funds belonging to him over which the court may have power or make them costs in the cause as against him or may discharge him from the contempt but leave him in custody for the costs which may be cleared if he be insolvent under the provisions hereinafter contained in that behalf.

A person committed for contempt omitting to apply for his discharge the court may compulsorily discharge him.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 18.

In Formâ Pauperis.

136. If a defendant upon being brought before the court upon a *habeas corpus* shall make oath (which shall be administered to him by the registrar and he shall be examined in open court) that he is unable by reason of poverty to employ a solicitor to put in his answer the court shall thereupon refer it to a master to inquire into the truth of that allegation and to report thereon to the court forthwith and thereupon the court may make such order as upon other reports of the like nature under the provisions hereinafter contained.

Defendant brought up under *habeas corpus* making oath of poverty court may refer it to a master to inquire and report &c.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 6.
2 Pring 1665.

137. The registrar by special order of the court shall visit any prison and examine any prisoner or prisoners confined there for contempt only and shall report his opinion on their respective case or cases to the court and thereupon it shall be lawful for the court to order if it shall see fit that the costs of the contempt of any such prisoner shall be paid out of any fund which hereafter may be available

Registrar by special order to visit and examine prisoners confined for contempt and report &c.

11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 7.
2 Pring 1666.

31 VICTORIÆ No. 18. able for that purpose and to assign a solicitor and counsel to such prisoner for putting in his answer and defending him in *formâ pauperis* and to direct any such prisoner having previously done such acts as the court shall direct to be discharged out of custody. Provided that if any such defendant become entitled to any funds out of such cause the same shall be applied under the direction of the said court in the first instance to the reimbursement of the fund.

Registrar visiting prisoner to examine prisoner &c. on oath.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 8.
2 Pring 1666.

138. It shall be lawful for the registrar visiting any prison or to whom the case of a prisoner shall be referred by the court itself to examine the prisoner and all other persons whom he may think it proper to examine upon oath and to administer an oath or oaths to any such prisoner and other persons accordingly and to cause any officers clerks and ministers of any court of law or equity to bring and produce upon oath before him any records orders books papers or other writings belonging to the said courts or to any of the officers within the same as such officers.

Prisoners under Disabilities.

If court satisfied that prisoner is an idiot &c. court shall appoint a guardian.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 15 cl. 9.
2 Pring 1666.

139. If it shall appear to the satisfaction of the court that any such prisoner is an idiot lunatic or of unsound mind although no commission has issued the court shall appoint a guardian to put in his answer and discharge the defendant providing for the costs in any of the ways pointed out by this Act as shall seem just and if the court shall see fit the defence may be made by such guardian in *formâ pauperis*.

Insolvents.

Discharge of insolvent may extend to process for contempt in non-payment of money and to costs incurred by creditor but subject to taxation.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 16.
2 Pring 1670.

140. The discharge of any prisoner adjudicated upon under the authority of any Act already or which may hereafter be passed for the relief of insolvent debtors shall and may extend to all process issuing from any court of equity for any contempt of such court for non-payment of money or of costs charges or expenses in any such court and in such case the said discharge shall be deemed to extend to all costs which such prisoner shall be liable to pay in consequence or by reason of such contempt or on purging the same and every discharge so adjudicated as aforesaid as to any debt or damages of any creditor of such prisoner shall be deemed to extend also to all costs incurred by such creditor before the filing of such prisoner's schedule in any action or suit brought by such creditor against such prisoner for the purpose for the recovery of the same and all persons as to whose demands for any such costs money or expenses any such persons shall be so adjudged to be discharged shall be deemed and taken to be creditors of such prisoner in respect thereof and entitled to the benefits of all the provisions made for creditors by the said Act or any future Act subject nevertheless to such ascertaining of the amount of the said demands as may be had by taxation or otherwise and to such examination thereof as is in the said last-mentioned Act or as shall be in any future Act provided in respect of all claim to a dividend of such insolvent's estate and effects.

When process of contempt is for non-performance of an act.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 17.
2 Pring 1670.

141. Where the process of contempt is for the non-performance of an act for example the not answering the plaintiff's bill and the bill in equity to which the insolvent is a party is taken *pro confesso* and he has not paid the costs of the contempt or the insolvent has

has fully answered the plaintiff's bill or interrogatories or otherwise cleared his contempt except as far as regards the payment of the costs or it has become in event unnecessary for him to do the act for the non-performance of which he was committed or attached the court of equity in which the suit is depending shall upon the application of the party in contempt discharge him from the same except as to the costs thereof for which he shall remain in custody and such costs shall be deemed within the provision lastly hereinbefore contained and he shall be dischargeable therefrom and from the process of contempt in like manner as if the process of contempt were for non-payment of money or costs. Provided that this order or regulation shall not weaken any of the other powers by this Act given nor shall anything herein contained lessen the operation of the said Act for the relief of insolvent debtors.

Privilege.

142. And whereas in many cases persons having privilege of Parliament are named as defendants in suits instituted in courts of equity against them either alone or jointly with other persons for enforcing against them demands and duties cognizable in courts of equity and in some cases such defendants having privileges of Parliament have stood out to the return of process of sequestration issued against them for enforcing appearance and such process of sequestration hath not been found sufficient to enforce such appearance be it therefore enacted That in case any defendant having privilege of Parliament shall upon a return of process of sequestration issued against him for not putting in an appearance to any original or other bill of complaint instituted against him in a court of equity for enforcing discovery and relief or discovery alone (as the case may be) neglect to appear that then and in such case such court upon producing the return of such sequestration in court may on the motion or other application of the plaintiff in such cause appoint a solicitor to enter an appearance for such defendant so having privilege of Parliament and such proceedings may be thereupon had in the cause as if the party had actually appeared.

143. And whereas in many cases it is necessary on the part of the persons having legal rights against persons having privilege of Parliament to proceed by bill in equity against such persons so having privilege of Parliament to obtain from them discovery on oath of facts intended to be used or given in evidence in courts of law against the persons making such discovery and in cases where such persons having such privilege as aforesaid shall stand out process of contempt parties entitled to such discovery against them have not sufficient means of compelling or obtaining the same in all cases be it therefore enacted That when any defendant having privilege of Parliament shall have appeared to any bill filed against him seeking a discovery upon oath or when an appearance shall have been entered for such defendant according to the provisions aforesaid and such person shall refuse or neglect to put in his answer to such bill within the time for that purpose allowed by the rules and orders of such court that then it shall and may be lawful for the plaintiff in such suit to apply to the court for an order that such bill shall be taken *pro confesso* against such

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Appearances may be put in for defendants having privilege of Parliament in court of equity on return of process of sequestration.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 12.
2 Pring 1663

In default of answer to bill in equity against persons having privilege of Parliament bill shall be taken *pro confesso*.
11 Geo. IV. & 1 Wm. IV. c. 36 s. 13.
2 Pring 1663.

31 VICTORIA No. 18. such defendant and upon such application such court of equity shall make an order that such bill shall be taken *pro confesso* unless the defendant shall within eight days after being served with such order show good cause to the contrary.

Mistakes.

In case directions as to practice &c. not followed court may rectify proceedings.
17 Vic. No. 7 s. 48.
2 Pring 1718.
15 & 16 Vic. c. 86 s. 60.

144. In case any of the directions herein contained with respect to the practice and course of proceeding in the court in its equity jurisdiction shall by mistake of parties fail to be followed in any suit or proceeding it shall be lawful for the court if it shall think fit upon payment of such costs as such court shall direct to make such order giving effect to and rectifying such proceedings as may be justified by the merits of the case.

Penalties.

Penalty for falsely swearing &c.
17 Vic. No. 7 s. 22.
2 Pring 1712.
15 & 16 Vic. c. 86 s. 23.

145. All persons swearing declaring affirming or attesting before any person authorised by this Act to administer oaths and take declarations affirmations or attestations of honor shall be liable to all such penalties punishments and consequences for any wilful and corrupt false swearing declaring affirming or attesting contained therein as if the matter sworn declared affirmed or attested had been sworn declared affirmed or attested before the said court or persons now by law authorised to administer oaths and take declarations affirmations or attestations upon honor or a commissioner of the said court for taking affidavits.

Commissioners and others may take attestations upon honor.

146. Every person by law authorised to administer oaths and take declarations and affirmations shall be so authorised to take attestations upon honor.

Penalty for forging signature or seal of judge &c. empowered to administer oaths under this Act.
17 Vic. No. 7 s. 23.
2 Pring 1712.
15 & 16 Vic. c. 86 s. 24.

147. If any person shall forge the signature or the official seal of any judge notary public or other person lawfully authorised to administer oaths under this Act or shall tender in evidence any plea answer disclaimer examination affidavit or other judicial or official document with a false or counterfeit signature or seal of any such judge court notary public or other person authorised as aforesaid attached or appended thereto knowing the same signature or seal to be false or counterfeit every such person shall be guilty of felony and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years and not less than three years or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement.

Jurisdiction in Infancy.

Mother petitioning may obtain access to her infant under regulations.
18 Vic. No. 1 s. 1.
1 Pring 684.

148. It shall be lawful for the Supreme Court or for the primary judge of the said court in equity or during his absence or illness for any other judge of the said court upon hearing the petition of the mother of an infant being in the sole custody or control of the father thereof or of any person by his authority or of any guardian after the death of the father if the said court or judge shall see fit to make order for the access of the petitioner to such infant at such times and subject to such regulations as the said court or judge shall deem convenient and just and if such infant shall be within the age of seven years to make order that such infant shall be delivered to and remain

remain in the custody of the petitioner until attaining such age 31 VICTORIA No. 18.
subject to such regulations as the said court or judge shall deem
convenient and just.

149. All orders which shall be made by virtue of this Act by the said court or judge shall be enforced by process of contempt of the said court. Orders may be enforced by process of contempt.
18 Vic. No. 1 s. 2.
1 Pring 684.

150. Provided always and be it enacted that no order shall be made by virtue of this Act whereby the mother against whom adultery shall be established by the judgment decree or sentence of the court in its matrimonial causes jurisdiction shall have the custody of any infant or access to any infant anything herein contained to the contrary notwithstanding. Unless in cases of adultery.
18 Vic. No. 1 s. 3.
1 Pring 684.

151. It shall be lawful for every infant upon or in contemplation of his or her marriage with the sanction of the Supreme Court in its equitable jurisdiction to make a valid and binding settlement or contract for a settlement of all or any part of his or her property or property over which he or she has any power of appointment whether real or personal and whether in possession reversion remainder or expectancy and every conveyance appointment and assignment of such real or personal estate or contract to make a conveyance appointment or assignment thereof executed by such infant with the approbation of the said court for the purpose of giving effect to such settlement shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years. Provided always that this enactment shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant. Infants may with the approbation of the Supreme Court make valid settlements or contracts for settlements of their real and personal estate upon marriage.
20 Vic. No. 2 s. 1.
1 Pring 685.

152. Provided always that in case any appointment under a power of appointment or any disentailing assurance shall have been executed by any infant tenant in tail under the provisions of this Act and such infant shall afterwards die under age such appointment or disentailing assurance shall thereupon become absolutely void. In case infant die under age appointment &c. to be void.
20 Vic. No. 2 s. 2.
1 Pring 685.

153. The sanction of the Supreme Court in its equitable jurisdiction to any such settlement or contract for a settlement may be given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit and if there be no guardian the court may require a guardian to be appointed or not as it shall think fit and the court also may if it shall think fit require that any persons interested or appearing to be interested in the property should be served with notice of such petition. The sanction of the Supreme Court to be given upon petition.
20 Vic. No. 2 s. 3.
1 Pring 685.

154. Provided always that nothing in this Act contained shall apply to any male infant under the age of twenty years or to any female infant under the age of seventeen years. Not to apply to males under twenty or females under seventeen years of age.
20 Vic. No. 2 s. 4.
1 Pring 685.

155. The jurisdiction and powers by the four sections last preceding of this Act vested in the Supreme Court may be exercised by the primary judge thereof in equity or one other judge acting as such in his absence or during his illness in the same manner as the ordinary equitable jurisdiction and powers of the Supreme Court are exercised and subject in like manner to appeal rehearing and review. Jurisdiction given to the primary judge in equity or one other judge in his absence or illness.
20 Vic. No. 2 s. 5.
1 Pring 685.

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Powers of the Court.

Power to judges to
make general rules
and orders from
time to time.

16 Vic. No. 3 s. 27.

2 Pring 1693.

27 Vic. No. 14 s. 20.

3 Pring 316.

156. It shall be lawful for the judges of the said court or a majority of them whereof the Chief Justice shall be one from time to time to make rescind and alter general rules and orders for better enabling the opinion of the said court to be obtained on special cases and for effectuating the purposes of this Act as to the debts and liabilities of deceased persons and otherwise and for making any provisions which may be or be deemed necessary or proper as to amendment revivor and supplemental matter or relief and as to costs of any proceedings under or in pursuance of this Act and for regulating the times and form and mode of procedure and generally the practice of the said court in respect of the matters to which this Act relates and every of them and for altering the number of days by this Act limited for the return of any writ or for the doing of any thing by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper and so far as may be found expedient for altering the course of proceeding hereinbefore prescribed in respect to such matters or any of them.

Commencement and Short Title.

Commencement of
Act.

Short title.

157. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Equity Act of 1867.*"

An Act to Consolidate and Amend the Laws relating to Trustees Mortgagees Purchasers and Incapacitated Persons.

31 VICTORIA No. 19.

[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to trustees mortgagees purchasers infants *femmes covert* and lunatics Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Preamble.

Interpretation.

1. The several words hereinafter named are herein used and applied in the manner following respectively (that is to say)—

Interpretation of terms.

16 Vic. No. 19 s. 2.

2 Pring 1721.

The term "land" shall be taken to include all tenements and hereditaments and any part or share of or estate or interest in any tenements or hereditaments of what tenure or kind soever.

"Land."

The word "stock" shall mean any fund annuity or security transferable in books kept by any company or society established or to be established or transferable by deed alone or by deed accompanied by other formalities and any share or interest therein.

"Stock."

The word "seized" shall be applicable to any vested estate for life or of a greater description at law and in equity in possession or in futurity in any lands.

"Seized."

The word "possessed" shall be applicable to any vested estate less than a life estate at law or in equity in possession or in expectancy in any lands.

"Possessed."

The words "contingent right" as applied to lands shall mean a contingent or executory interest a possibility coupled with an interest whether the object of the gift or limitation of such interest or possibility be or be not ascertained also a right of entry whether immediate or future and whether vested or contingent.

"Contingent right."

The words "convey" and "conveyance" applied to any person shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another lands whereof such person is seized or entitled to a contingent right either for the whole estate of the person conveying or disposing or for any less estate together with the performance of all formalities required by law to the validity of such conveyance including the acts to be performed by married women and tenants in tail in accordance with any provisions or enactments for giving effect to conveyances by such persons as if fines with proclamations had been levied or common recoveries suffered.

"Convey" and "conveyance."

The

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"Assign" or "assignment."

The words "assign" or "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning surrendering or otherwise transferring lands of which such person is possessed either for the whole estate of the person so possessed or for any less estate.

"Transfer."

The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another.

"Trust" and "trustee."

The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage but with this exception the words "trust" and "trustee" shall extend to and include implied and constructive trusts and cases where the trustee has some beneficial estate or interest in the subject of the trust and shall extend to and include the duties incident to the office of personal representative of a deceased person.

"Devisee."

The word "devisee" shall in addition to its ordinary signification mean the heir of a devisee and the devisee of an heir and generally any person claiming an interest in the lands of a deceased person not as heir of such deceased person but by a title dependent solely upon the operation of the laws concerning devise and descent.

"Mortgage."

The word "mortgage" shall be applicable to every estate interest or property in lands or personal estate which would in a court of equity be deemed merely a security for money and shall be taken to include every instrument by virtue whereof land is in any manner conveyed assigned pledged or charged as security for the repayment of money or money's worth lent and to be re-conveyed re-assigned or released on satisfaction of the debt and the term "mortgagor" shall be taken to include every person by whom such conveyance assignment pledge or charge as aforesaid shall be made and the term "mortgagee" shall be taken to include every person to whom or in whose favor any such conveyance assignment pledge or charge as aforesaid is made or transferred.

"Mortgagor."

"Judgment."
22 & 23 Vic. c. 35 s.
25.

The term "judgment" shall be taken to include decrees orders of courts of equity and bankruptcy and other orders having the operation of judgments.

"Lunatic."

The word "lunatic" shall mean any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo*.

"Person of unsound mind."

The expression "person of unsound mind" shall mean any person not an infant who not having been found to be a lunatic shall be incapable from infirmity of mind to manage his own affairs.

The words "registrar" "prothonotary" and "master in equity" shall be convertible.

Trustees and Executors.

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2. No trustee executor or administrator making any payment or doing any act *bona fide* under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead at the time of such payment or act or had done some act to avoid the power provided that the fact of the death or of the doing of such act as last aforesaid at the time of such payment or act *bona fide* done as aforesaid by such trustee executor or administrator was not known to him. Provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee executor or administrator if the money had not been paid away under such power of attorney.

Trustee &c. making payment under power of attorney not to be liable by reason of death of party giving such power.
22 & 23 Vic. c. 35 s. 26.

3. When an executor or administrator liable as such to the rents covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereafter mentioned and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and shall have assigned the lease or agreement for a lease to a purchaser thereof he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease and the executor or administrator so distributing the residuary estate shall not after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

As to liability of executor or administrator in respect of rents covenants or agreements.
22 & 23 Vic. c. 35 s. 27.

4. In like manner where an executor or administrator liable as such to the rent covenants or agreements contained in any conveyance on chief rent or rent charge (whether any such rent be by limitation of use grant or reservation) or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid

As to liability of executor &c. in respect of rents &c. in conveyances on rent charge.
22 & 23 Vic. c. 35 s. 28.

31 VICTORIA No. 19. laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance and the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

As to distribution of the assets of testator or intestate after notice given by executor or administrator.
22 & 23 Vic. c. 35 s. 29.

5. Where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the court in equity in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate such executor or administrator shall at the expiration of the time named in the said notices or the last of the said notices for sending in such claims be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto having regard to the claims of which such executor or administrator has then notice and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof as the case may be but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

Trustee executor &c. may apply by petition to judge in equity for opinion advice &c. in management &c. of trust property.
22 & 23 Vic. c. 35 s. 30.

6. Any trustee executor or administrator shall be at liberty without the institution of a suit to apply by petition to the judge in equity or by summons upon a written statement to such judge at chambers for the opinion advice or direction of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate such application to be served upon or the hearing thereof to be attended by all persons interested in such application or such of them as the said judge shall think expedient and the trustee executor or administrator acting upon the opinion advice or direction given by the said judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee executor or administrator in the subject matter of the said application Provided nevertheless that this Act shall not extend to indemnify any trustee executor or administrator in respect of any act done in accordance with such opinion advice or direction as aforesaid if such trustee executor or administrator shall have been guilty of any fraud

fraud or wilful concealment or misrepresentation in obtaining such opinion advice or direction and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made.

7. Where any trustee executor or administrator shall apply for the opinion advice or direction of a judge in equity under the section last preceding of this Act the petition or statement shall be signed by counsel and the judge by whom it is to be answered may require the petitioner or applicant to attend him by counsel either in chambers or in court where he deems it necessary to have the assistance of counsel.

Form of applying for advice of judge &c. under the preceding section.
23 & 24 Vic. c. 38 s. 9.

8. Every deed will or other instrument creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following that is to say—

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.
22 & 23 Vic. c. 38 s. 31.

“That the trustees or trustee for the time being of the said deed will or other instrument shall be respectively chargeable only for such moneys stocks funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts receipts neglects or defaults and not for those of each other nor for any banker broker or other person with whom any trust moneys or securities may be deposited nor for the insufficiency or deficiency of any stocks funds or securities nor for any other loss unless the same shall happen through their own wilful default respectively and also that it shall be lawful for the trustees or trustee for the time being of the said deed will or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed will or other instrument.”

9. When a trustee executor or administrator shall not by some instruments creating his trust be expressly forbidden to invest any trust fund on real securities in any part of the United Kingdom or on the stock of the Bank of England or Ireland or on East India stock it shall be lawful for such trustee executor or administrator to invest such trust fund on such securities or stock and he shall not be liable on that account as for a breach of trust Provided that such investment shall in other respects be reasonable and proper and this section shall operate retrospectively.

As to investments by trustees.
22 & 23 Vic. c. 38 s. 32.
23 & 24 Vic. c. 38 s. 11.
Fide Equity Act s. 92.

Trust Funds and Trustees.

10. All trustees executors administrators or other persons having in their hands or under their control any moneys belonging to any trust or the major part of them on filing an affidavit in the Supreme Court in its equitable jurisdiction shortly describing the instrument creating the trust according to the best of their knowledge and belief may pay such moneys into the hands of the master in equity in the matter of the particular trust (describing the same by the names of the parties as accurately as may be for the purpose of distinguishing it) in trust to attend the orders of the court and all such persons having any Government or other stocks or securities in the United Kingdom or in this or any other British colony standing in their names or in the name of any deceased person of whom they are personal representatives or held by them upon any trust or the major part of them may transfer or deposit such stocks or securities to or in the name of or with the master in equity with his privity in the matter of the particular trust describing

Trustees may pay moneys or transfer securities into the Supreme Court.
21 Vic. No. 7 s. 1.
2 Pring 1752.

31 VICTORIA No. 19. the same as aforesaid in trust to attend the orders of the said court and in every such case a certificate from the master of the fact of the money being so paid in or of the transfer or deposit of such stocks or securities shall be a sufficient discharge to such persons for the money stocks or securities so paid transferred or deposited.

Court may effectuate transfer &c. by a majority of trustees.
21 Vic. No. 7 s. 2.
2 Pring 1752.

11. If upon a petition presented under this Act it shall appear to the court that moneys stocks or securities are vested in any persons within the meaning of this Act and that the major part of them are desirous (or where there are only two such persons that one of them is desirous) of paying transferring or depositing the same under the provisions of this Act but that for some reason the concurrence of the other or others of them cannot be had it shall be lawful for the court to direct such payment transfer or deposit to be made by the major part of them (or by one as the case may be) without the concurrence of the others or other of them and where any such moneys stocks or securities are deposited with any banker broker or other depositary it shall be lawful for the court to make an order for the payment transfer or delivery thereof to the major part of such persons as aforesaid or to one of them for the purpose of being paid transferred or deposited to or with the master as to the court shall seem meet and every payment transfer and delivery in pursuance of any such order shall be as valid as if made on the authority or by the act of all the persons entitled to such moneys stocks or securities and shall protect and indemnify all persons acting in pursuance of such order.

Court to make orders for application of trust moneys.
21 Vic. No. 7 s. 3.
2 Pring 1753.

12. Such orders as the court shall think fit may be from time to time made by the court in its equitable jurisdiction in respect of the trust moneys stocks or securities paid in transferred and deposited as aforesaid and for the investment and payment of such moneys or of any dividends or interest on such moneys stocks or securities and for the transfer and delivery out of such stocks and securities and for the administration of the trust generally upon a petition presented in a summary way to the court by such party or parties as to the court shall appear to be competent in that behalf and service of such petition shall be made upon such persons as the court shall direct and every order made upon any such petition shall have the same effect and shall be enforced and subject to rehearing and appeal in the same manner as if made in a suit regularly instituted in the court Provided that if it shall appear that any such funds cannot be safely distributed without the institution of a suit or suits the court may direct such suit or suits to be instituted.

New Trustees.

Power to court to make order appointing new trustees.
16 Vic. No. 19 s. 30.
2 Pring 1727.
13 & 14 Vic. c. 60 s. 32.

13. Whenever it shall be expedient to appoint a new trustee or new trustees and it shall be found inexpedient difficult or impracticable so to do without the assistance of the said court it shall be lawful for the said court to make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees.

Power to the court to appoint new trustees where there is no existing trustee.
17 Vic. No. 4 s. 9.
2 Pring 1733.
15 & 16 Vic. c. 55 s. 9.

14. In all cases where it shall be expedient to appoint a new trustee and it shall be found inexpedient difficult or impracticable so to do without the assistance of the said court it shall be lawful for the said court to make an order appointing a new trustee or new trustees whether

whether there be any existing trustee or not at the time of making such order. 31 VICTORIA No. 19.

15. When any person is or shall be jointly or solely seized or possessed of any lands or entitled to any stock upon any trust and such person has been or shall be convicted of felony it shall be lawful for the said court upon proof of such conviction to appoint any person to be a trustee in the place of such convict and to make an order for vesting such lands or the right to transfer such stock and to receive the dividends or income thereof in such person to be so appointed trustee and such order shall have the same effect as to lands as if the convict trustee had been free from any disability and had duly executed a conveyance or assignment of his estate and interest in the same.

Power to appoint new trustees in lieu of persons convicted of felony.

17 Vic. No. 4 s. 8.

2 Pring 1733.

15 & 16 Vic. c. 55 s. 8.

16. The person or persons who upon the making of such order as last aforesaid shall be trustee or trustees shall have all the same rights and powers as he or they would have had if appointed by decree in a suit duly instituted.

The new trustees to have the power of trustees appointed by decree in suit.

16 Vic. No. 19 s. 31.

2 Pring 1727.

13 & 14 Vic. c. 60

s. 33.

Powers to court to vest lands in new trustees.

16 Vic. No. 19 s. 32.

2 Pring 1727.

13 & 14 Vic. c. 60

s. 31.

17. It shall be lawful for the said court upon making any order for appointing a new trustee or new trustees either by the same or by any subsequent order to direct that any lands subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees for such estate as the court shall direct and such order shall have the same effect as if the person or persons who before such order were the trustee or trustees (if any) had duly executed all proper conveyances and assignments of such lands for such estate.

18. It shall be lawful for the said court upon making any order for appointing a new trustee or new trustees either by the same or by any subsequent order to vest the right to call for a transfer of any stock subject to the trust or to receive the dividends or income thereof or to sue for or recover any chose in action subject to the trust or any interest in respect thereof in the person or persons who upon the appointment shall be the trustee or trustees.

Power to court to vest right to sue at law in new trustees.

16 Vic. No. 19 s. 33.

2 Pring 1727.

13 & 14 Vic. c. 60

s. 35.

19. Any such appointment by the said court of new trustees and any such conveyance assignment or transfer as aforesaid shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done.

Old trustees not to be discharged from liability.

16 Vic. No. 19 s. 34.

2 Pring 1728.

13 & 14 Vic. c. 60

s. 36.

20. In every case in which the said court has jurisdiction under this Act to order a conveyance or transfer of land or stock or to make a vesting order it shall be lawful for the said court also to make an order appointing a new trustee or new trustees.

Supreme Court may make order for appointment of trustees.

17 Vic. No. 4 s. 10.

2 Pring 1733.

15 & 16 Vic. c. 55

s. 10.

Mortgagees.

21. Whenever the person entitled to receive payment of any money secured by mortgage upon land shall indorse upon the deed of mortgage an acknowledgment under his hand attested by one witness of the payment of the mortgage debt in full or of any less sum in satisfaction thereof such indorsement shall (upon registration thereof in the manner provided by any law for the registration of other instruments affecting land) operate as a discharge of the mortgage debt

Facilitating extinguishment of mortgages.

16 Vic. No. 19 s. 52.

2 Pring 1730.

31 VICTORIÆ No. 19. debt and a re-conveyance of all and singular the hereditaments comprised in such mortgage to the person or persons who shall at the time of such payment be entitled to the equity of redemption thereof according to his and their respective interests therein.

Facilitating redemption in case of absent or unknown mortgagees.

16 Vic. No. 19 s. 53.
2 Pring 1730.
13 & 14 Vic. c. 60
s. 19.

22. Whenever a person entitled to receive payment of any mortgage debt or of any portion thereof shall be out of the jurisdiction of the said court or cannot be found within this colony or is unknown or it shall be uncertain who is so entitled it shall be lawful for the said court upon petition for that purpose by the person entitled to redeem the mortgaged premises to direct the amount of such mortgage debt or of such portion as aforesaid to be paid into court for the use of such person or persons as may thereafter claim the same and establish his or their right thereto and upon such payment into court a certificate under the hand and seal of the master in equity that such payment was allowed and has been made shall on registration thereof as aforesaid operate in the same manner as an indorsement upon the mortgage deed by the person entitled as aforesaid and registered as aforesaid under the provisions hereinbefore contained respectively Provided that before any such payment into court shall be allowed the amount of the debt or of such portion thereof as aforesaid shall be ascertained in such manner as the said court or judge may think fit and that in respect of any amount not paid into court and which may eventually be shown by the person or persons claiming the same to have been in fact due or payable over and above the amount paid into court the same shall continue to be a debt due upon the mortgage upon the land anything in this section to the contrary notwithstanding.

On claim made by petition and proof of right court may order money to be paid provided it be proved also that all deeds have been delivered up to person or persons entitled thereto.
16 Vic. No. 19 s. 54.
2 Pring 1731.

23. Upon petition by the person or persons claiming to be entitled to the money so paid into court and on proof of his or their right thereto the said court shall upon such terms (if any) as may seem meet order the said money to be paid to the said person or persons according to his or their right or interest to and in the same Provided that no such money shall be paid to the said person or persons under such order until it shall be shown by the admission of the parties concerned or otherwise to the satisfaction of the master in equity of the said court that the deed or instrument of mortgage and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same or in connection therewith have been delivered up to the person or persons by whom the said money was so paid into court or to his or their executors administrators or assigns.

Master in equity may by order of the court invest the money paid into court in Government securities.
16 Vic. No. 19 s. 55.
2 Pring 1731.

24. It shall be lawful for the said master in equity by the order of the said court to be made without any formal request by motion petition or otherwise to invest the moneys so paid into court in the purchase of debentures or other negotiable securities granted by the Government of this colony in respect of debts contracted by the said Government.

Power to convey in place of mortgagee.
16 Vic. No. 19 s. 19.
2 Pring 1724.

25. When any person to whom any lands have been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same or such last-mentioned person shall consent to

to an order for the re-conveyance of such lands then in any of the following cases it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct (that is to say)—

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Supreme Court or cannot be found

When an heir or devisee of such mortgage shall upon a demand by a person entitled to require a conveyance of such lands or a duly authorised agent of such last-mentioned person have stated in writing that he will not convey the same or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid or a duly authorised agent of such last-mentioned person

When it shall be uncertain which of several devisees of such mortgagee was the survivor

When it shall be uncertain as to the survivor of several devisees of such mortgagee or as to the heir of such mortgagee whether he be living or dead

When such mortgagee shall have died intestate as to such lands and without an heir or shall have died and it shall not be known who is his heir or devisee

And the order of the said court made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee as the case may be had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

Purchasers.

26. The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof unless the contrary shall be expressly declared by the instrument creating the trust or security.

Purchaser not to be bound to see to the application of purchase-money.
22 & 23 Vic. c. 35. s. 23.

27. Any seller or mortgagor of land or of any chattels real or personal or choses in action conveyed or assigned to a purchaser or mortgagee or the solicitor or agent of any such seller or mortgagor who shall after the commencement of this Act conceal any settlement deed will or other instrument material to the title or any incumbrance from the purchaser or mortgagee or falsify any pedigree upon which the title does or may depend in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud shall be guilty of a misdemeanor and being found guilty shall be liable at the discretion of the court to suffer such punishment by fine or imprisonment for any time not exceeding two years with or without hard labor or by both as the court shall award and shall also be liable to an action for damages at the suit of the purchaser or mortgagee or those claiming under the purchaser or mortgagee for any loss sustained by them or either or any of them in consequence of the settlement deed will or other instruments or incumbrance

Punishment of vendor &c. for fraudulent concealment of deeds &c. or falsifying pedigree.
22 & 23 Vic. c. 35 s. 24.
23 & 24 Vic. c. 38 s. 8

31 VICTORIÆ No. 19. incumbrance so concealed or of any claim made by any person under such pedigree but whose right was concealed by the falsification of such pedigree and in estimating such damages when the estate shall be recovered from such purchaser or mortgagee or from those claiming under the purchaser or mortgagee regard shall be had to any expenditure by them or either or any of them in improvements on the land but no prosecution for any offence included in this section against any seller or mortgagor or any solicitor or agent shall be commenced without the sanction of Her Majesty's Attorney-General or in case that office be vacant of Her Majesty's Solicitor-General and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or Solicitor-General (as the case may be) shall direct.

Lunatic Trustees Mortgagees and Executors.

Supreme Court may convey estates of lunatic trustees and mortgagees.

16 Vic. No. 19 s. 3.

2 Pring 1722.

13 & 14 Vic. c. 60 s. 3.

28. When any lunatic or person of unsound mind shall be seized or possessed of any lands upon any trust or by way of mortgage it shall be lawful for the said court to make an order that such lands be vested in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the trustee or mortgagee had been sane and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Court may transfer stock of lunatic trustees and mortgagees.

16 Vic. No. 19 s. 5.

*2 Pring 1722.

13 & 14 Vic. c. 60 s. 5.

29. When any lunatic or person of unsound mind shall be solely entitled to any stock or to any chose in action upon any trust or by way of mortgage it shall be lawful for the said court to make an order vesting in any person or persons the right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof either in such person or persons so jointly entitled as aforesaid or in such last-mentioned person or persons together with any other person or persons the said court may appoint.

Power to transfer stock of deceased person.

16 Vic. No. 19 s. 6.

2 Pring 1722.

13 & 14 Vic. c. 60 s. 6.

30. When any stock shall be standing in the name of any deceased person whose personal representative is a lunatic or person of unsound mind or when any chose in action shall be vested in any lunatic or person of unsound mind as the personal representative of a deceased person it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof in any person or persons the said court may appoint.

Infant Trustees and Mortgagees.

Court may convey estates of infant trustees and mortgagees.

16 Vic. No. 19 s. 7.

2 Pring 1722.

13 & 14 Vic. c. 60 s. 7.

31. Where any infant shall be seized or possessed of any lands upon any trust or by way of mortgage it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the

the order shall have the same effect as if the infant trustee or mortgagee had been twenty-one years of age and had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

32. When any infant shall be solely entitled to any stock upon any trust it shall be lawful for the said court to make an order vesting in any person or persons the right to transfer such stock or to receive the dividends or income thereof and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof either in the person or persons jointly entitled with the infant or in him or them together with any other person or persons the said court may appoint.

Power to make an order for the transfer or receipt of dividends of stock in name of an infant trustee.

17 Vic. No. 4 s. 3.
2 Pring 1732.
15 & 16 Vic. c. 55 s. 3.

Fiduciaries not Amenable to Process or Refusing to Transfer.

33. When any person solely seized or possessed of any lands upon any trust shall be out of the jurisdiction of the said court or cannot be found it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate.

Court may convey the estate of a trustee out of the jurisdiction of the court.

16 Vic. No. 19 s. 9.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 9.

34. When any person or persons shall be seized or possessed of any lands upon any trust jointly with a person out of the jurisdiction of the said court or who cannot be found it shall be lawful for the said court to make an order vesting the lands in the person or persons so jointly seized or possessed or in such last-mentioned person or persons together with any other person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the trustee out of the jurisdiction or who cannot be found had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Court may make order in cases where persons are seized of lands jointly with parties out of jurisdiction of court &c.

16 Vic. No. 19 s. 12.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 10.

35. Where any person jointly or solely seized or possessed of any lands upon any trust shall after a demand by a person entitled to require a conveyance or assignment of such lands or a duly authorised agent of such last-mentioned person have stated in writing that he will not convey or assign the same or shall neglect or refuse to convey or assign such lands for the space of twenty-eight days next after a proper deed for conveying or assigning the same shall have been tendered to him by any person entitled to require the same or by a duly authorised agent of such last-mentioned person it shall be lawful for the Supreme Court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate.

Power to convey in place of a refusing trustee.

16 Vic. No. 19 s. 17.
2 Pring 1724.

36. When any person or persons shall be jointly entitled with any person out of the jurisdiction of the said court or who cannot be found or concerning whom it shall be uncertain whether he be living or dead to any stock or chose in action upon any trust it shall be lawful for the said court to make an order vesting the right to transfer such

When joint trustee of stock out of jurisdiction or his survivorship uncertain.

16 Vic. No. 19 s. 21.
2 Pring 1725.
13 & 14 Vic. c. 60 s. 22.

31 VICTORIÆ No. 19. such stock or to receive the dividends or income thereof or to sue for or recover such chose in action or any interest in respect thereof either in such person or persons so jointly entitled as aforesaid or in such last-mentioned person or persons together with any person or persons the said court may appoint and when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said court or cannot be found or it shall be uncertain whether he be living or dead it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof in any person or persons the said court may appoint.

When trustee of stock refuses to transfer.
16 Vic. No. 19 s. 22.
2 Pring 1725.
13 & 14 Vic. c. 60 s. 23.

37. Where any sole trustee of any stock or chose in action shall neglect or refuse to transfer such stock or to receive the dividends or income thereof or to sue for or recover such chose in action or any interest in respect thereof according to the direction of the person absolutely entitled thereto for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto it shall be lawful for the said court to make an order vesting the sole right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof in such person or persons as the said court may appoint.

When one of several trustees of stock refuses to transfer or receive and pay over dividends.
16 Vic. No. 19 s. 23.
2 Pring 1726.
13 & 14 Vic. c. 60 s. 24.

38. Where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock or to receive the dividends or income thereof or to sue for or recover such chose in action according to the directions of the person absolutely entitled thereto for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action in the other trustee or trustees of the said stock or chose in action or in any person or persons whom the said court may appoint jointly with such other trustee or trustees.

When stock is standing in the name of a deceased person.
16 Vic. No. 19 s. 24.
2 Pring 1726.
13 & 14 Vic. c. 60 s. 25.

39. When any stock shall be standing in the sole name of a deceased person and his or her personal representative shall be out of the jurisdiction of the said court or cannot be found or it shall be uncertain whether such personal representative be living or dead or such personal representative shall neglect or refuse to transfer such stock or receive the dividends or income thereof according to the direction of the person absolutely entitled thereto for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid it shall be lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof in any person or persons whom the said court may appoint.

On like neglect by executor similar order may be made.
17 Vic. No. 4 s. 5.
2 Pring 1732.
15 & 16 Vic. c. 55 s. 5.

40. When any stock shall be standing in the sole name of a deceased person and his personal representative shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the Supreme Court for that purpose shall have been served upon him it shall be lawful

lawful for the said court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof in any person or persons whom the said court may appoint. 31 VICTORIA No. 19.

Uncertain Survivorship or Heirship of Trustee.

41. Where there shall have been two or more persons jointly seized or possessed of any lands upon any trust and it shall be uncertain which of such trustees was the survivor it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate. When it is uncertain which of several trustees was the survivor.
16 Vic. No. 19 s. 13.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 13.

42. Where any one or more person or persons shall have been seized or possessed of any lands upon any trust and it shall not be known as to the trustee last known to have been seized or possessed whether he be living or dead it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the last trustee had truly executed a conveyance or assignment of the lands in the same manner for the same estate. When it is uncertain whether the last trustee be living or dead.
16 Vic. No. 19 s. 14.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 14.

43. When any person seized of any lands upon any trust shall have died intestate as to such lands without an heir or shall have died and it shall not be known who is his heir or devisee it shall be lawful for the said court to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner for the same estate. When trustee dies without an heir.
16 Vic. No. 19 s. 15.
2 Pring 1724.
13 & 14 Vic. c. 60 s. 15.

Contingent Rights.

44. When any lunatic or person of unsound mind shall be entitled to any contingent right in any lands upon any trust or by way of mortgage it shall be lawful for the said court to make an order wholly releasing such lands from such contingent right or disposing of the same to such person or persons as the said court shall direct and the order shall have the same effect as if the trustee or mortgagee had been sane and had duly executed a deed so releasing or disposing of the contingent right. Court may convey contingent rights of lunatic trustees and mortgagees.
16 Vic. No. 19 s. 4.
2 Pring 1722.
13 & 14 Vic. c. 60 s. 4.

45. Where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage it shall be lawful for the said court to make an order wholly releasing such lands from such contingent right or disposing of the same to such person or persons as the said court shall direct and the order shall have the same effect as if the infant had been twenty-one years of age and had duly executed a deed so releasing or disposing of the contingent right. Contingent rights of infant trustees and mortgagees.
16 Vic. No. 19 s. 8.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 8.

46. When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the said court or cannot be found it shall be lawful for the said court to make an order wholly releasing such lands from such contingent right or disposing Contingent rights of trustees.
16 Vic. No. 19 s. 11.
1 Pring 1723.
13 & 14 Vic. c. 60 s. 21.

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disposing of the same to such person or persons as the said court shall direct and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right.

Court may make order in cases where persons are jointly entitled with others out of the jurisdiction of the court to a contingent right in lands.
16 Vic. No. 19 s. 12.
2 Pring 1723.
13 & 14 Vic. c. 60 s. 12.

47. When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the said court or cannot be found it shall be lawful for the said court to make an order disposing of the contingent right of the person out of the jurisdiction or who cannot be found to the person or persons so jointly entitled as aforesaid or to such last-mentioned person or persons together with any other person or persons and the order shall have the same effect as if the trustee out of the jurisdiction or who cannot be found had duly executed a conveyance so releasing or disposing of the contingent right.

Contingent right of unborn trustee.
16 Vic. No. 19 s. 16.
2 Pring 1724.
13 & 14 Vic. c. 60 s. 16.

48. When any lands are subject to a contingent right in an unborn person or class of unborn persons who upon coming into existence would in respect thereof become seized or possessed of such lands upon any trust it shall be lawful for the said court to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person or class of unborn persons or to make an order which shall vest in any person or persons the estate or estates which such unborn person or class of unborn persons would upon coming into existence be seized or possessed of in such lands.

Power to make an order for vesting the estate on refusal or neglect of a trustee to convey or release.
17 Vic. No. 4 s. 2.
2 Pring 1732.
15 & 16 Vic. c. 55 s. 2.

49. In every case where any person is or shall be jointly or solely seized or possessed of any lands or entitled to a contingent right therein upon any trust and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands or a duly authorised agent of such last-mentioned person requiring such trustee to convey or assign the same or to release such contingent right it shall be lawful for the said court if the said court shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand to make an order vesting such lands in such person in such manner and for such estate as the court shall direct or releasing such contingent right in such manner as the court shall direct and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands or a release of such right in the same manner and for the same estate.

Power to convey in place of person entitled to contingent right.
16 Vic. No. 19 s. 18.
2 Pring 1724.

50. Where any person jointly or solely entitled to a contingent right in any lands upon any trust shall after a demand for a conveyance or release of such contingent right by a person entitled to require the same or a duly authorised agent of such last-mentioned person have stated in writing that he will not convey or release such contingent right or shall neglect or refuse to convey or release such contingent right for the space of twenty-eight days next after a proper deed for conveying or releasing the same shall have been tendered to him by any person entitled to require the same or by a duly authorised agent of such last-mentioned person it shall be lawful for the Supreme Court

to

to make an order releasing or disposing of such contingent right in such manner as it shall direct and the order shall have the same effect as if the trustee so neglecting or refusing had duly executed a conveyance so releasing or disposing of the contingent right.

Persons to be deemed Trustees.

51. When a decree shall have been made by the said court directing the sale of any lands for the payment of the debts of a deceased person every person seized or possessed of such lands or entitled to a contingent right therein as heir or under the will of such deceased debtor shall be deemed to be so seized or possessed or entitled as the case may be upon a trust within the meaning of this Act and the said court is hereby empowered to make an order wholly discharging the contingent right under the will of such deceased debtor of any unborn person.

When a decree is made for sale of real estate for payment of debts.
16 Vic. No. 19 s. 27.
2 Pring 1727.
13 & 14 Vic. c. 60 s. 29.

52. When any decree or order shall have been made by the Supreme Court directing the sale of any lands for any purpose whatever every person seized or possessed of such land or entitled to a contingent right therein being a party to the suit or proceeding in which such decree or order shall have been made and bound thereby or being otherwise bound by such decree or order shall be deemed to be so seized or possessed or entitled (as the case may be) upon a trust within the meaning of this Act and in every such case it shall be lawful for the said court if the said court shall think it expedient for the purpose of carrying such sale into effect to make an order vesting such lands or any part thereof for such estate as the court shall think fit either in any purchaser or in such other person as the court shall direct and every such order shall have the same effect as if such person so seized or possessed or entitled had been free from all disability and had duly executed all proper conveyances and assignments of such lands for such estate.

Supreme Court may make an order for vesting the estate in lieu of conveyance by a party to the suit after a decree or order for sale.
17 Vic. No. 4 s. 1.
2 Pring 1731.
15 & 16 Vic. c. 55 s. 1.

Contracts affecting Incapacitated Persons.

53. The guardian of any infant with the approbation of the Supreme Court in equity to be signified by an order to be made on the petition of such guardian in a summary way may enter into any agreement for or on behalf of such infant and the committee of the estate of any lunatic with the approbation of the Supreme Court as aforesaid to be signified by an order to be made in the petition of such committee in a summary way may enter into any agreement for or on the behalf of such lunatic which the guardian of an infant may enter into for or on the behalf of an infant by virtue of this Act.

Such agreements may be made by guardians with the approbation of the court and by committees with the approbation of the court.
11 Geo. 1V. & 1 Wm. 1V. c. 65 s. 26.
2 Pring 1680.

54. When any person who shall have contracted to sell mortgage let divide exchange or otherwise dispose of any land shall afterwards become lunatic and a specific performance of such contract either wholly or so far as the same shall remain to be performed shall have been decreed by the Supreme Court in equity either before or after such lunacy it shall be lawful for the committee of the estate of such lunatic in the place of such lunatic by the direction of the Supreme Court as aforesaid to be signified by an order to be made on the petition of the plaintiff or any of the plaintiffs in such suit to convey such land in pursuance of such decree to such person and in such manner as the

Committee of lunatics by direction of the court may convey land in performance of contracts.
11 Geo. 1V. & 1 Wm. 1V. c. 65 s. 27.
2 Pring 1680.

Supreme

31 VICTORIÆ No. 19. Supreme Court as aforesaid shall direct and the purchase money or so much thereof as remains unpaid shall be paid to the committee of such lunatic.

The court may order the estates of lunatics to be sold or charged by mortgage for raising money for the payment of debts &c.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 28.
2 Pring 1681.

55. It shall be lawful for the Supreme Court as aforesaid to order any land of or to which any person being lunatic shall be seized or possessed or entitled to be sold or charged and encumbered by way of mortgage or otherwise disposed of as shall be deemed most expedient for the purpose of raising money for payment of the debts or engagements of such lunatic the discharge of any encumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the said commission and the costs of such sales mortgages charges and encumbrances and other dispositions or for any of such purposes as aforesaid as such court shall respectively direct and that the moneys arising from any such sale mortgage charge encumbrance or other disposition may be paid laid out and applied in payment of the debts and engagements of such lunatic the discharge of any encumbrances on his estates the costs of applying for and obtaining the commission of lunacy and in opposition thereto and all proceedings under the same commission or incurred under the order of such court as aforesaid and the costs of such sales mortgages charges and encumbrances and other dispositions in such manner as the said court as aforesaid shall direct and to direct the committee of the estate of such person to execute in the place of such person respectively conveyances of the estates so to be sold mortgaged encumbered or disposed of and to do all such acts as shall be necessary to effectuate the same in such manner as such court as aforesaid shall direct.

Surplus of moneys to be of the same nature as the estate.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 29.
2 Pring 1681.

56. Provided always that on any sale mortgage charge encumbrance or other disposition which shall be made in pursuance of this Act the person whose estate shall be sold mortgaged charged encumbered or otherwise disposed of and his or her heirs next of kin devisees legatees executors administrators and assigns shall have such and the like interest in the surplus which shall remain after answering the purposes aforesaid of the money raised by such sale mortgage charge encumbrance or other disposition as he she or they would have had in the estate by the sale mortgage charge encumbrance or other disposition of which such moneys shall be raised if no such sale mortgage charge encumbrance or other disposition had been made and such moneys shall be of the same nature and character as the estate so sold mortgaged charged encumbered or disposed of and it shall be lawful for the said Supreme Court as aforesaid to make such orders and to direct such acts and deeds to be done and executed as shall be necessary for carrying the aforesaid objects into effect and for the due application of such surplus moneys.

Act shall not subject estates of lunatics to debts otherwise than they are now subject.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 30.
2 Pring 1681.

57. Provided nevertheless that nothing in this Act contained shall extend to subject any part of the estates of any person being lunatic to the debts or demands of his creditors otherwise than as the same are now subject and liable by due course of law but only to authorise the Supreme Court as aforesaid to make order in such cases as are hereinbefore mentioned when the same shall be deemed just and reasonable or for the benefit or advantage of such lunatic.

58. Every

58. Every surrender and lease agreement conveyance mortgage or other disposition respectively granted and accepted executed and made by virtue of this Act shall be and be deemed as valid and legal to all intents and purposes as if the person by whom or in whose place or on whose behalf the same respectively shall be granted or accepted executed and made had been of full age unmarried or of sane mind and had granted accepted made and executed the same and every such surrender and lease respectively made and accepted by or on the behalf of a *femme covert* shall be valid.

31 VICTORIA No. 19.
Surrender and leases
deemed valid.
11 Geo. IV. & 1 Wm.
IV. c. 65 s. 31.
2 Pring 1681.

Stock and Money of Incapacitated Persons.

59. It shall be lawful for the Supreme Court in equity by an order to be made on the petition of the guardian of any infant in whose name any stock shall be standing or any sum of money by virtue of any Act for paying off any stock and who shall be beneficially entitled thereto or if there shall be no guardian by an order to be made in any cause depending in the said court to direct all or any part of the dividends due or to become due in respect of such stocks or any such sum of money to be paid to any guardian of such infant or to any other person according to the discretion of such court for the maintenance and education or otherwise for the benefit of such infant such guardian or other person to whom such payment shall be directed to be made being named in the order directing such payment and the receipt of such guardian or other person for such dividends or sum of money or any part thereof shall be as effectual as if such infant had attained the age of twenty-one years and had signed and given the same.

Court may order dividends of stock belonging to infants to be applied for maintenance.
11 Geo. IV. & 1 Wm.
IV. c. 65 s. 32.
2 Pring 1682.

60. Where any stock shall be standing in the name of or shall be vested in any person being lunatic who shall be beneficially entitled thereto or shall be standing in the name of or vested in any person being committee of the estate of a person found lunatic in trust for or as part of his property and such committee shall have died intestate or shall himself become lunatic or shall be out of the jurisdiction of or not amenable to the process of the Supreme Court in equity or it shall be uncertain whether such committee be living or dead or such committee shall neglect or refuse to transfer such stock and to receive and pay over the dividends thereof to a new committee or as he shall direct for the space of fourteen days next after a request in writing for that purpose shall have been made by any new committee then and in every or any such case it shall be lawful for the Supreme Court as aforesaid upon the petition of the committee of the estates of the person being lunatic or of the person reported by the master to whom the matter is referred as a proper person to be such committee although such report shall not have been confirmed to direct such person as such court shall think proper to appoint for that purpose to transfer such stock to or into the name of any new committee or in the name of the accountant-general of the said court or otherwise and also to receive and pay over the dividends thereof or such sum or sums of money in such manner as such court shall think proper and such transfers and payments shall be valid and effectual to all intents and purposes whatsoever.

Stock belonging to lunatics may be ordered by the court to be transferred.
11 Geo. IV. & 1 Wm.
IV. c. 65 s. 33.
2 Pring 1682.

61. Where

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Where stock shall be standing in the names of lunatics residing out of Queensland the court may direct the transfer.

11 Geo. IV. & 1 Wm. IV. c. 65 s. 34.
2 Pring 1682.

Money of infants and persons of unsound mind to be paid into court.

16 Vic. No. 19 s. 46.
2 Pring 1729.

61. Where any stock shall be standing in the name of or vested in any person residing out of Queensland it shall be lawful for the Supreme Court as aforesaid upon petition and proof being made to his or their satisfaction that such person has been declared lunatic and that his personal estate has been vested in a curator or other person appointed for the management thereof according to the laws of the place where such person shall reside to direct any person whom such court shall think proper to appoint for that purpose to transfer such stock or any part or parts thereof into the name of any such curator or other such person as aforesaid or otherwise and also to receive and pay over the dividends thereof as such court shall think fit and that such transfer and payments shall be valid and effectual to all intents and purposes whatsoever.

62. Where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands stock or chose in action conveyed assigned or transferred under this Act it shall be lawful for the person by whom such money is payable to pay the same into any of the banks established in this colony by Acts of Parliament or Council in the name and with the privity of the master in equity of the Supreme Court in trust in any cause then depending concerning such money or if there shall be no such cause to the credit of such infant or person of unsound mind subject to the order or disposition of the said court and it shall be lawful for the said court upon petition in a summary way to order any money so paid to be invested in such manner as the said court shall think fit and to order payment or distribution thereof or payment of the dividends or interest thereof as to the said court shall seem reasonable and every cashier of any bank who shall receive any such money is hereby required to give to the person paying the same a receipt for such money and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received.

Really of Incapacitated Persons.

Guardians of minors &c. in order to the surrender and renewal of leases may apply to the court in equity and by order may surrender such leases and renew the same &c.

11 Geo. IV. & 1 Wm. IV. c. 65 s. 12.
2 Pring 1676.

63. In all cases where any person being under the age of twenty-one years or a *femme covert* is or shall become entitled to any lease or leases made or granted or to be made or granted for the life or lives of one or more person or persons or for any term of years either absolute or determinable upon the death of one or more person or persons or otherwise it shall be lawful for such person under the age of twenty-one years or for his or her guardian or other person on his behalf and for such *femme covert* or any person on her behalf to apply to the Supreme Court in equity as to land within its jurisdiction by petition or motion in a summary way and by the order and direction of the said court such infant or *femme covert* or his guardian or any person appointed in the place of such infant or *femme covert* by the said court shall and may be enabled from time to time by deed or deeds to surrender such lease or leases and accept and take in the place and for the benefit of such person under the age of twenty-one years or *femme covert* one or more new lease or leases of the premises comprised in such lease surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable

determinable upon such number of lives or for such term or terms of 31 VICTORIA No. 19.
years absolute as was or were mentioned or contained in the lease or
leases so surrendered at the making thereof respectively or otherwise
as the said court shall direct.

64. In all cases where any person being lunatic shall become Committees of luna-
entitled to any lease or leases made or granted or to be made or granted tics may in like
for the life or lives of one or more person or persons or for any term of manner surrender
years either absolute or determinable upon the death of one or more lease and renew the
person or persons or otherwise it shall be lawful for the committee of same &c.
the estate of such person to apply to the Supreme Court in equity 11 Geo. IV. & 1 Wm.
by petition or motion in a summary way and by the order and IV. c. 65 s. 13.
direction of the said court such committee shall and may be enabled 2 Pring 1676.
from time to time by deed or deeds in the place of such lunatic to
surrender such lease or leases and accept and take in the name and
for the benefit of such lunatic one or more new lease or leases of the
premises comprised in such lease or leases surrendered by virtue of this
Act for and during such number of lives or for such term or terms of
years absolute or determinable as aforesaid as was or were mentioned
or contained in the lease or leases so surrendered at the making
thereof respectively or otherwise as the said court shall direct.

65. Every sum of money and other consideration paid by any guardian trustee committee or other person as a fine premium or Charges attending
income or in the nature of a fine premium or income for the renewal renewal to be charged
of any such lease and all reasonable charges incident thereto shall be on the estates as the
paid out of the estate or effects of the infant or lunatic for whose benefit court shall direct,
the lease shall be renewed or shall be a charge upon the leasehold 11 Geo. IV. & 1 Wm.
premises together with interest for the same as the said court as afore- IV. c. 65 s. 14.
said shall direct and determine and as to leases to be made upon 2 Pring 1676.
surrenders by *femmes covert* unless the fine or consideration of such
lease and the reasonable charges shall be otherwise paid or secured
the same together with interest shall be a charge upon such leasehold
premises for the benefit of the person who shall advance the same.

66. Every lease to be renewed as aforesaid shall operate and be New leases shall be to
to the same uses and be liable to the same trusts charges encumbrances the same uses.
dispositions devices and conditions as the lease to be from time to time 11 Geo. IV. & 1 Wm.
surrendered as aforesaid was or would have been subject to in case such IV. c. 65 s. 15.
surrender had not been made. 2 Pring 1676.

67. Where any person being under the age of twenty-one years Infants and married
or a *femme covert* might in pursuance of any covenant or agreement women empowered to
if not under disability be compelled to renew any lease made or to be grant renewals of
made for the life or lives of one or more person or persons or for any leases.
term or number of years absolute or determinable on the death of one 11 Geo. IV. & 1 Wm.
or more person or persons it shall be lawful to and for such infant or IV. c. 65 s. 16.
its guardian in the name of such infant or such *femme covert* by the 2 Pring 1676.
direction of the Supreme Court in equity to be signified by an order
to be made in a summary way upon the petition of such infant or his
guardian or of such *femme covert* or of any person entitled to such
renewal from time to time to accept of a surrender of such lease and
to make and execute a new lease of the premises comprised in such
lease for and during such number of lives or for such term or terms
determinable upon such number of lives or for such term or terms of
years

31 VICTORIA No. 19. years absolute as was or were mentioned in the lease so surrendered at the making thereof or otherwise as the court by such order shall direct.

Supreme Court may authorise leases to be made of lands belonging to infants when it is to the benefit of the estate.

11 Geo. IV. & 1 Wm.

IV. c. 65 s. 17.

2 Pring 1677.

68. Where any person being an infant under the age of twenty-one years is or shall be seized or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Supreme Court in equity to be for the benefit of such person that a lease or under lease should be made of such estates for terms of years for encouraging the erection of buildings thereon or for repairing buildings actually being thereon or the working of mines or otherwise improving the same or for farming or other purposes it shall be lawful for such infant or his guardian in the name of such infant by the direction of the said court to be signified by an order to be made in a summary way upon the petition of such infant or his guardian to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the said court shall direct but in no such case shall any fine or premium be taken and in every such case the best rent that can be obtained regard being had to the nature of the lease shall be reserved upon such lease and the leases and covenants and provisions therein shall be settled and approved of by a master of the said court and a counterpart of every such lease shall be executed by the lessee or lessees therein to be named and such counterparts shall be deposited for safe custody in the master's office until such infant shall attain twenty-one but with liberty to proper parties to have the use thereof if required in the meantime for the purpose of enforcing any of the covenants therein contained Provided that no lease be made of the capital mansion house and the park and grounds respectively held therewith for any period exceeding the minority of any such infant.

If persons bound to renew are out of the jurisdiction of the court the renewals may be made by a person appointed by the Supreme Court in the name of the person who ought to have renewed.

11 Geo. IV. & 1 Wm.

IV. c. 65 s. 18.

2 Pring 1677.

69. Where any person who in pursuance of any covenant or agreement in writing might if within the jurisdiction and amenable to the process of the Supreme Court in equity be compelled to execute any lease by way of renewal shall not be within the jurisdiction or not amenable to the process of the said court it shall be lawful to and for the said court by an order to be made upon the petition of any person or any of the persons entitled to such renewal (whether such person be or be not under any disability) to direct such person as the said court shall think proper to appoint for that purpose to accept a surrender of the subsisting lease and make and execute a new lease in the name of the person who ought to have renewed the same and such deed executed by the person to be appointed as aforesaid shall be as valid as if the person in whose name the same shall be made had executed the same and had been alive and not under any disability but in every such case it shall be in the discretion of the said court if under the circumstances it shall seem requisite to direct a bill to be filed to establish the right of the party seeking the renewal and not to make the order for such new lease unless by the decree to be made in such cause or until after such decree shall have been made.

70. Where

70. Where any person being lunatic is or shall be entitled or has a right or in pursuance of any covenant or agreement might if not under disability be compelled to renew any lease made or to be made for the life or lives of one or more person or persons or for any term or number of years absolute or determinable on the death of one or more person or persons or otherwise it shall be lawful to and for the committee of the estate of such lunatic in the name of such lunatic by the direction of the Supreme Court in equity to be signified by an order to be made in a summary way upon the petition of such committee or of any person entitled to such renewal from time to time to accept of a surrender of such lease and to make and execute to any person a new lease of the premises comprised in such lease to be surrendered by virtue of this Act for and during such number of lives or for such term or terms of years determinable upon such number of lives or for such term or terms of years absolute as were mentioned or contained in such lease so surrendered at the making thereof or otherwise as the said court as aforesaid by such order shall direct and this provision shall extend as well to cases where the lunatic shall not be compellable to renew but it shall be for his benefit to do so as to cases where a renewal might be effectually enforced against the lunatic if of sound mind.

71. Provided always that no renewed lease shall be executed by virtue of this Act in pursuance of any covenant or agreement unless the fine (if any) or such other sum or sums of money (if any) as ought to be paid on such renewal and such things (if any) as ought to be performed in pursuance of such covenant or agreement by the lessee or tenant be first paid and performed and counterparts of every renewed lease to be executed by virtue of this Act shall be duly executed by the lessee.

72. All fines premiums and sums of money which shall be had received or paid for or on account of the renewal of any lease after a deduction of all necessary incidental charges and expenses shall be paid if such renewal shall be made by or in the name of an infant to his guardian and be applied and disposed of for the benefit of such infant in such manner as the said court shall direct if such renewal shall be made by a *femme covert* to such person or in such manner as the court shall direct for her benefit if such renewal shall be made in the name of any person out of jurisdiction or not amenable as aforesaid to such person or in such manner or into the Supreme Court in equity to such account and to be applied and disposed of as the said court shall direct and if such renewal should be made in the name of a lunatic to the committee of the estate of such lunatic and be applied and disposed of for the benefit of such lunatic in such manner as the court as aforesaid shall direct but upon the death of such lunatic all such sum and sums of money as shall arise by such fines or premiums or so much thereof as shall remain unapplied for the benefit of such lunatic at his death shall as between the representatives of the real and personal estates of such lunatic be considered as real estate unless such lunatic shall be tenant for life only and then the same shall be considered as personal estate.

73. Where any person being lunatic is or shall be seized or possessed of any land either for life or for some other estate with power of

31 VICTORIA No. 19.
Committees of lunatics by the direction of the court may accept of surrenders and make new leases.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 19.
2 Pring 1677.

Fines to be paid before renewals and counterparts are executed.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 20.
2 Pring 1678.

Premiums how to be paid.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 21.
2 Pring 1678.

On death of lunatic money arising by such fines to be considered real estate.

The power of leasing lands &c. of lunatics having a limited

31 VICTORIA No. 19. of granting leases and taking fines reserving small rents on such leases for one two or three lives in possession or reversion or for some number of years determinable upon lives or for any term of years absolutely such power of leasing which is or shall be vested in such person being lunatic and having a limited estate only shall and may be executed by the committee of the estate of such person under the direction and order of the Supreme Court as aforesaid.

estate may be executed by the committee.

11 Geo. IV. & 1 Wm. IV. c. 65 s. 23.
2 Pring 1680.

Where lunatics are seized of estates in fee or entail or an absolute interest in leasehold estates the court may direct leases to be made.

11 Geo. IV. & 1 Wm. IV. c. 65 s. 24.
2 Pring 1680.

74. Where any person being lunatic is or shall be seized or possessed of or entitled to any land in fee or in tail or to any leasehold land for an absolute interest and it shall appear to the Supreme Court as aforesaid to be for the benefit of such person that a lease or under lease should be made of such estates for terms of years for encouraging the erection of buildings therein or for repairing buildings actually being thereon or otherwise improving the same or for farming or other purposes it shall be lawful for the Supreme Court as aforesaid to order and direct the committee of the estate of such lunatic to make such lease of the land of such persons respectively or any part thereof according to his or her interest therein respectively and to the nature of the tenure of such estates respectively for such term or terms of years and subject to such rents and covenants as the Supreme Court as aforesaid shall direct.

Stock in General.

On neglect to transfer stock for twenty-eight days order may be made vesting right to transfer in such person as the court shall appoint.

17 Vic. No. 4 s. 4.
2 Pring 1732.
15 & 16 Vic. c. 55 s. 4.

75. Where any person shall neglect or refuse to transfer any stock or to receive the dividends or income thereof or to sue for or recover any chose in action or any interest in respect thereof for the space of twenty-eight days next after an order of the said court for that purpose shall have been served upon him it shall be lawful for the said court to make an order vesting all the right of such person to transfer such stock or to receive the dividends or income thereof or to sue for and recover such chose in action or any interest in respect thereof in such person or persons as the said court may appoint.

Act to be an indemnity to the bank and other companies.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 44.
2 Pring 1684.

Indemnity to company so obeying.
17 Vic. No. 4 s. 7.
2 Pring 1733.
15 & 16 Vic. c. 55 s. 7.

76. This Act shall be and is hereby declared to be a full and complete indemnity and discharge to all companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto and such acts and things shall not be questioned or impeached in any court of law or equity to their prejudice or detriment and every order made or to be made being or purporting to be made under this Act by the said court and duly passed and entered shall be a complete indemnity to all companies and associations whatsoever and all persons for any act done pursuant thereto and it shall not be necessary for such company or association or person to inquire concerning the propriety of such order or whether the said court had jurisdiction to make the same.

Petitions.

Commission concerning persons of unsound mind.
16 Vic. No. 19 s. 50.
2 Pring 1730.
13 & 14 Vic. c. 60 s. 52.

77. Upon any petition being presented under this Act to the said court concerning a person of unsound mind it shall be lawful for the said court of equity should it so think fit to direct that a commission in the nature of a writ *de lunatico inquirendo* shall issue concerning such person and to postpone making any order upon such petition until a return shall have been made to such commission.

Procedure.

Procedure.

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78. An order under any of the hereinbefore contained provisions for the appointment of a new trustee or trustees or concerning any lands stock or chose in action subject to a trust may be made upon the application of any person beneficially interested in such lands stock or chose in action whether under disability or not or upon the application of any person duly appointed as a trustee thereof and an order under any of the provisions hereinbefore contained concerning any lands stock or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption whether under disability or not or of any person interested in the moneys secured by such mortgage.

Who may apply.
16 Vic. No. 19 s. 15.
2 Pring 1728.
13 & 14 Vic. c. 60
s. 37.

79. When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained relating to the conveyance and transfer of real and personal property vested in mortgagees and trustees from the said court it shall be lawful for him to exhibit before the master in equity of the said court a statement of the facts whereon such order is sought to be obtained and adduce evidence in support thereof and if such evidence shall be satisfactory to the said master he shall at the request of the person adducing such evidence give a certificate (briefly describing the deponents on whose evidence and the documents on which such certificate is founded) under his hand of the several material facts found by him to be true and of his opinion that such a person is entitled to an order in the form set forth in such certificate.

Power to go before the master in the first instance.
16 Vic. No. 19 s. 16.
2 Pring 1728.
13 & 14 Vic. c. 60
s. 38.

80. When any person shall under the said last mentioned provisions of this Act apply to the master in equity of the said court in the first instance and adduce evidence for the purpose of obtaining the certificate of such master as a foundation for an order of the said court it shall be lawful for the said master to order service of such application upon any person or to dismiss such application and to direct that the costs of any person consequent thereon shall be paid by the person making the same and all orders of the master under this Act shall be enforced by the same process as orders of the court made in any suit against a party thereto.

Powers of the master.
16 Vic. No. 19 s. 48.
2 Pring 1730.
13 & 14 Vic. c. 61
s. 50.

81. Any person who shall have obtained such certificate may apply by motion to the said court for an order to the effect set forth in such certificate or for such other as such person may deem himself entitled to upon the facts found by the master.

Power to petition the court.
16 Vic. No. 19 s. 37.
2 Pring 1728.
13 & 14 Vic. c. 60
s. 39.

82. Any person or persons entitled in manner aforesaid to apply for an order from the said court may should he so think fit present a petition in the first instance to the said court for such order as he may deem himself entitled to and may give evidence by affidavit or otherwise in support of such petition before the said court and may serve such person or persons with notice of such petition as he may deem entitled to service thereof.

Power to present petition in the first instance.
16 Vic. No. 19 s. 38.
2 Pring 1728.
13 & 14 Vic. c. 60
s. 40.

83. Upon the hearing of any such motion or petition it shall be lawful for the said court should it be deemed necessary to direct a reference to the master in equity of the court to inquire into any facts which require such an investigation or it shall be lawful for the said court to direct such motion or petition to stand over to enable

What may be done upon petition.
16 Vic. No. 19 s. 39.
2 Pring 1728.
13 & 14 Vic. c. 60
s. 41.

the

31 VICTORIA No. 19. the petitioner or petitioners to adduce evidence or further evidence before the said court, or to enable notice or any further notice of such motion or petition to be served upon any person or persons.

Court may dismiss petition with or without costs.

16 Vic. No. 19 s. 40.
2 Pring 1728.
13 & 14 Vic. c. 60 s. 42.

Power to make an order in a cause.

16 Vic. No. 19 s. 41.
2 Pring 1728.
13 & 14 Vic. c. 60 s. 43.

Orders made by the court founded on certain allegations to be conclusive evidence of the matter contained in such allegations.

16 Vic. No. 19 s. 42.
2 Pring 1728.
13 & 14 Vic. c. 60 s. 44.

Court may make a decree in the absence of a trustee.

16 Vic. No. 19 s. 47.
2 Pring 1730.
13 & 14 Vic. c. 60 s. 49.

84. Upon the hearing of any such motion or petition whether any certificate or report from the master shall have been obtained or not it shall be lawful for the said court to dismiss such motion or petition with or without costs or to make an order thereupon in conformity with the provisions of this Act.

85. Whensoever in any cause or matter either by the evidence adduced therein or by the admissions of the parties or by a report of the master the facts necessary for an order under the said last-mentioned provisions of this Act shall appear to such court to be sufficiently proved it shall be lawful for the said court either upon the hearing of the said cause or of any petition or motion in the said cause or matter to make such order under this Act.

86. Whenever any order shall be made under this Act for the purpose of conveying or assigning any lands or for the purpose of releasing or disposing of any contingent right and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the said court or cannot be found or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor or whether the last trustee or the heir or last surviving devisee of a mortgagee be living or dead or on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or devisee then in any such cases the fact that the court has made an order upon such an allegation shall be conclusive evidence of the matter so alleged in any court of law or equity upon any question as to the legal validity of the order. Provided always that nothing herein contained shall prevent the court directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Act or a re-disposition of any contingent right conveyed or disposed of by such order and it shall be lawful for the said court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act when the same shall appear to have been improperly obtained.

87. Where in any suit commenced or to be commenced in the said court it shall be made to appear to the court by affidavit that diligent search and inquiry has been made after any person made a defendant by name or by designation if his name be unknown who is only a trustee and that he cannot be found it shall be lawful for the said court to hear and determine such cause and to make such absolute decree therein against every person who shall appear to them to be only a trustee and not otherwise concerned in interest in the matter in question in such and the same manner as if such trustee had been duly served with the process of the court and had appeared and filed his answer thereto and had also appeared by his counsel and solicitor at the hearing of such cause. Provided always that no such decree shall bind affect or in anywise prejudice any person against whom the same shall be made without service of process upon him as aforesaid his

his heirs executors or administrators for or in respect of any estate right or interest which such person shall have at the time of making such decree for his own use or benefit or otherwise than as a trustee as aforesaid.

88. The said court may order the costs and expenses of and relating to the petitions orders directions conveyances assignments and transfers to be made in pursuance of this Act or any of them to be paid and raised out of or from the lands or personal estate or the rents or produce thereof in respect of which the same respectively shall be made or in such manner as the said court shall think proper.

Costs may be paid out of the estate.
16 Vic. No. 19 s. 49.
2 Pring 1730.
13 & 14 Vic. c. 60 s. 51.

Orders of Court and their Effect.

89. In every case where the said court shall under the provisions of this Act be enabled to make an order having the effect of a conveyance or assignment of any lands or having the effect of a release or disposition of the contingent right of any person born or unborn it shall also be lawful for the said court should it be deemed more convenient to make an order appointing a person to convey or assign such lands or release or dispose of such contingent right and the conveyance or assignment or release or disposition of the person so appointed shall when in conformity with the terms of the order by which he is appointed have the same effect in conveying or assigning the lands or releasing or disposing of the contingent right as an order of the said court would in the particular case have had under the provisions of this Act and in every case where the said court shall under the provisions of this Act be enabled to make an order vesting in any person or persons the right to transfer any stock transferable in the books of any company or society established or to be established it shall also be lawful for the said court if it be deemed more convenient to make an order directing any officer of such company or society at once to transfer or join in transferring the stock to the person or persons to be named in the order and this Act shall be a full and complete indemnity and discharge to all companies or societies and their officers and servants for all acts done or permitted to be done pursuant thereto.

Power to appoint a person to convey in certain cases.
16 Vic. No. 19 s. 20.
2 Pring 1725.
13 & 14 Vic. c. 60 s. 20.

90. Where any guardian committee receiver or other trustee appointed by the Supreme Court or the primary equity judge shall have been or shall be either by order in the particular cause or matter or by any general rule directed to account from time to time to the court or to file any report or account in the office of the master in equity it shall be lawful for the court on the application of any party interested or of such master on behalf of the parties or any of them or without any such application to enforce compliance with every such rule or order by a rule or summons to show cause and by rule or order absolute thereupon as in an action or proceeding at law and to punish non-compliance with any such rule or order absolute by attachment for contempt as in any case of contempt at law with costs in each case payable by and to whom the court shall think fit to direct.

Power to compel trustees to account.
21 Vic. No. 7 s. 4.
2 Pring 1753.

91. Where any order shall have been made under any of the provisions of this Act vesting the right to any stock in any person or persons appointed by the said court such legal right shall vest accordingly and thereupon the person or persons so appointed are hereby

Effect of an order vesting the legal right to transfer stock.
16 Vic. No. 19 s. 25.
2 Pring 1726.
13 & 14 Vic. c. 60 s. 26.

31 VICTORIA No. 19. hereby authorised and empowered to execute all deeds and powers of attorney and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise or relating to the receipt of the dividends thereof to the extent and in conformity with the terms of such order and all companies and associations whatever and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid to the extent and in conformity with the terms of such order as such companies associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made and after notice in writing of any such order of the said court concerning any stock shall have been given it shall not be lawful for any company or association whatever or any person having received such notice to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock or the payment of the dividends or produce thereof.

Companies and associations to comply with such orders.
17 Vic. No. 4 s. 6.
2 Pring 1732.
15 & 16 Vic. c. 55 s. 6.

92. When any order being or purporting to be under this Act shall be made by the said court vesting the right to any stock or vesting the right to transfer any stock or vesting the right to call for the transfer of any stock in any person or persons in every such case the legal right to transfer such stock shall vest accordingly and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorney and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise to the extent and in conformity with the terms of the order and all companies and associations whatever and all persons shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid to the extent and in conformity with the terms of such order as such companies associations or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made.

Costs may be directed to be paid.
11 Geo. IV. & 1 Wm. IV. c. 65 s. 35.
2 Pring 1632.

93. The Supreme Court in equity may order the costs and expenses of and relating to the petitions orders directions conveyances and transfers to be made in pursuance of this Act or any of them to be paid and raised out of or from the lands or stock or the rents or dividends in respect of which the same respectively shall be made in such manner as the said court shall think proper.

Declarations and Orders.

Court to declare what parties are trustees of lands comprised in any suit and as to the interests of persons unborn.
16 Vic. No. 19 s. 28.
2 Pring 1727.
13 & 14 Vic. c. 60 s. 30.

94. Where any decree shall be made by the said court for the specific performance of a contract concerning any lands or for the partition or exchange of any lands or generally when any decree shall be made for the conveyance or assignment of any lands either in cases arising out of the doctrine of election or otherwise it shall be lawful for the said court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof

thereof within the meaning of this Act or to declare concerning the interests of unborn persons who might claim under any party to the said suit or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transaction concerning which such decree is made that such interests of unborn persons are the interests of persons who upon coming into existence would be trustees within the meaning of this Act and thereupon it shall be lawful for the said court to make such order or orders as to the estates rights and interests of such persons born or unborn as the said court might under the provisions of this Act make concerning the estates rights and interests of trustees born or unborn.

31 VICTORIA No. 19.

95. It shall be lawful for the said court to make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act shall be exercised and thereupon the person or persons in whom such right shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced.

Power to make directions how the right to transfer stock to be exercised.
16 Vic. No. 19 s. 29.
2 Pring 1727.
13 & 14 Vic. c. 60 s. 31.

96. The court may make a qualified vesting order declaring by a statement contained in such order or by indorsement thereon or by such other manner as the court thinks fit that the title is to be deemed to commence from the date of some specified instrument or at or on some specified time event or condition.

Court may make a qualified vesting order.
25 & 26 Vic. c. 53 s. 51.

Choses in Action.

97. Where any order shall have been made under the provisions of this Act by the Supreme Court vesting the legal right to sue for or recover any chose in action or any interest in respect thereof in any person or persons such legal right shall vest accordingly and thereupon it shall be lawful for the person or persons so appointed to carry on commence and prosecute in his or their own name or names any action suit or other proceeding at law or in equity for the recovery of such chose in action in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action.

Effect of an order vesting legal rights in a chose in action.
16 Vic. No. 19 s. 26.
2 Pring 1726.

Charities.

98. It shall be lawful for the said court to exercise the powers herein conferred for the purpose of vesting any lands stock or chose in action in the trustee or trustees of any charity or society over which charity or society the said court would have jurisdiction upon suit duly instituted whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument or by the decree of the said court or by order made upon a petition to the said court under any Act authorising the said court to make an order to that effect in a summary way upon petition.

Trustees of charities.
16 Vic. No. 19 s. 43.
2 Pring 1729.
13 & 14 Vic. c. 60 s. 45.

Sole Judge.

99. The jurisdiction and powers by this Act vested in the Supreme Court may be exercised by the primary equity judge or one other judge acting for him in his absence or during his illness subject nevertheless to the like appeal re-hearing and review as in ordinary cases.

Powers may be exercised by equity judge.

31 VICTORIE No. 19.

General rules may be
made by the judges.
17 Vic. No. 21 s. 174.
2 Pring p. 1638.
15 & 16 Vic. c. 76
s. 223.
27 Vic. No. 14 s. 20.
3 Pring 316.

21 Vic. No. 7 s. 5.
2 Pring 1753.

Powers of the Court.

100. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

Commencement and Short Title.

Commencement of
Act.

Short title.

101. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Trustees and Incapacitated Persons Act of 1867.*"

An Act to Consolidate and Amend the Laws relating to Costs at Common Law and to Taxation in General. [28th December, 1867.] 31 VICTORIÆ No. 20.

WHEREAS it is expedient to consolidate and amend the laws relating to costs on the common law side of the Supreme Court and to taxation in general Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Costs against Executors.

1. In all actions hereafter brought by executors or administrators in right of their testator or intestate such executors or administrators (unless the court or a judge shall otherwise order) shall be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against them and in all other cases in which they would be liable to costs if suing upon a cause of action accruing to themselves in their own right and the defendant shall have judgment for such costs accordingly.

Executors suing in right of the testator to pay costs.
25 Vic. No. 13 s. 56.
2 Pring 1605.
3 & 4 Wm. IV. c. 12 s. 31.

Costs of Course.

2. A rule for costs of the day for not proceeding to trial pursuant to notice or not countermanding in sufficient time may be drawn up on affidavit without motion.

Costs of the day.
17 Vic. No. 21 s. 69.
2 Pring 1624.
15 & 16 Vic. c. 76 s. 99.

No Costs.

3. In all actions upon any judgment recovered or which shall be recovered in any court the plaintiff or plaintiffs in such action on the judgment shall not recover or be entitled to any costs of suit unless the court in which action on the judgment shall be brought or some judge of the same court shall otherwise order.

In actions on judgments recovered plaintiffs not entitled to costs unless otherwise ordered.
43 Geo. III. c. 46 s. 4.

Costs abiding Event.

4. When a new trial is granted on the ground that the verdict was against evidence the costs of the first trial shall abide the event unless the court shall otherwise order.

Payment of costs upon new trial on matters of fact.
20 Vic. No. 31 s. 16.
2 Pring 1649.
17 & 18 Vic. c. 125 s. 41.

Costs on Verdict for Plaintiff.

5. In all cases where the plaintiff is to recover damages he shall recover costs.

Where damages shall be recovered then costs also.

6. If upon any action personal other than an action of trespass or trespass on the case to be brought in the Supreme Court not being for any title or interest of lands nor concerning the freehold or inheritance of any lands nor for any battery it shall appear to the judges for the same court and so signified or set down by or by order of the justices before whom the same shall be tried that the debt or damages to be recovered therein in the same court shall not amount to the sum of forty shillings or above that in every such case the judges and justices before whom any such action shall be pursued shall not award for costs to the party plaintiff any greater or more costs than the sum of the debt or damages so recovered shall amount unto but less at their discretions.

6 Ed. I. c. 1. s. 2. statute of Gloucester. No costs shall be awarded in a personal action brought for a sum not amounting to forty shillings.
43 Eliz. c. 6 s. 2.
3 & 4 Vic. c. 21 s. 1.

31 VICTORIA No. 20.

Costs not to be recovered in action of trespass or of trespass on the case when damages recovered are less than forty shillings unless upon judge's certificate &c. 3 & 4 Vic. c. 24 s. 2. 23 & 24 Vic. c. 126 s. 34.

7. If the plaintiff in any action of trespass or trespass on the case brought or to be brought in the Supreme Court shall recover by the verdict of a jury less damages than forty shillings such plaintiff shall not be entitled to recover or obtain from the defendant in respect of such verdict any costs whatever whether it shall be given upon any issue or issues tried or judgment shall have passed by default unless the judge or presiding officer before whom such verdict shall be obtained shall immediately afterwards certify or direct it to be certified on the back of the record or on the writ of trial or writ of inquiry that the action was brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought or that the trespass or grievance in respect of which the action was brought was wilful and malicious.

Act not to extend to deprive plaintiffs of costs of actions for trespass. 3 & 4 Vic. c. 24 s. 3.

8. Provided always that nothing in the section last preceding contained shall extend to or be construed to extend to deprive any plaintiffs of costs in any action or actions brought for a trespass or trespasses over any lands commons wastes closes woods plantations or enclosures or for entering into any dwellings outbuildings or premises in respect of which any notice not to trespass thereon or therein shall have been previously served by or on behalf of the owner or occupier of the land trespassed over upon or left at the last reputed or known place of abode of the defendant or defendants in such action or actions.

Costs not recoverable in an action of tort where verdict less than £5 if judge certifies. 23 & 24 Vic. c. 126 s. 34.

9. When the plaintiff in any action for an alleged wrong in the Supreme Court recovers by the verdict of a jury less than five pounds he shall not be entitled to recover or obtain from the defendant any costs whatever in respect of such verdict whether given upon any issue or issues tried or judgment passed by default in case the judge or presiding officer before whom such verdict is obtained shall immediately afterwards certify or direct it to be certified on the back of the record or on the writ of trial or writ of inquiry that the action was not really brought to try a right besides the mere right to recover damages and that the trespass or grievance in respect of which the action was brought was not wilful and malicious and that the action was not fit to be brought.

In actions of slander under forty shillings the plaintiff shall recover no greater costs than damages. 21 Jac. I. c. 16 s. 6.

10. In all actions on the case for slanderous words to be sued or prosecuted by any person or persons in the said Supreme Court or in any court whatsoever that hath power to hold plea of the same if the jury upon the trial of the issue in such action or the jury that shall inquire of the damages do find or assess the damages under forty shillings then the plaintiff or plaintiffs in such action shall have and recover only so much costs as the damages so given or assessed amount unto without any further increase of the same any law statute custom or usage to the contrary in anywise notwithstanding.

Costs in Supreme Court when not more than thirty pounds recovered. 22 Vic. No. 18 s. 100. 1 Pring 513. 13 & 14 Vic. c. 61 s. 11.

11. If in any action in the Supreme Court the plaintiff shall recover by judgment by default verdict or otherwise a sum not exceeding thirty pounds the plaintiff shall have judgment to recover such sum only and no costs except in the cases hereinafter provided and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs.

Costs in Supreme Court in certain cases. 22 Vic. No. 18 s. 101. 1 Pring 513.

12. If the plaintiff shall in any such action recover a sum not exceeding thirty pounds and a judge of the Supreme Court shall certify or direct it to be certified that the cause of action was one for which a

plaint

plaint could not have been tried in any District Court without the defendant's consent or that any officer of the District Court was a party (except in respect of any claim to any goods and chattels taken in execution of the process of the court or the proceeds in virtue thereof) or that it appeared to him that there was a sufficient reason for bringing or trying the said action in the Supreme Court the plaintiff in any such case shall have the same (and no other) right to a judgment to recover his costs that he would have had if the section last preceding had not been passed.

Costs on Verdict for Defendant or Nolle Prosequi.

13. If any person or persons shall commence or sue in any court of record or in any other court any action bill or plaint of trespass or ejectment or any other action whatsoever wherein the plaintiff or demandant might have costs (in case judgment should be given for him) and the plaintiff or plaintiffs demandant or demandants in any such action bill or plaint after appearance of the defendant or defendants be nonsuited or that any verdict happen to pass by any lawful trial against the plaintiff or plaintiffs demandant or demandants in any such action bill or plaint that then the defendant and defendants in every such action bill or plaint shall have judgment to recover his costs against every such plaintiff and plaintiffs demandant and demandants to be assessed taxed and levied and that to be assessed and taxed by the discretion of the judge or judges of the court where any such action bill or plaint shall be commenced sued or taken and also every defendant in such action bill or plaint shall have such process and execution for the recovery and having of his costs against the plaintiff or plaintiffs as the same plaintiff or plaintiffs should or might have had against the defendant or defendants in case that judgment had been given for the part of the said plaintiff or plaintiffs in such action bill or plaint. Provided always that all and every such poor person or persons being plaintiff or plaintiffs in any of the said actions bills or plaints which at the commencement of their suits or actions be admitted by the discretion of the judge or judges where such suits or actions shall be pursued or taken to have their process and counsel of charity without any money or fee paying for the same shall not be compelled to pay any costs by virtue and force of this statute but shall suffer other punishment as by the discretion of the justices or judge before whom such suits shall depend shall be thought reasonable anything before rehearsed to the contrary hereof notwithstanding.

14. When several persons shall be made defendants in any personal action any one or more of them who shall have a *nolle prosequi* entered as to him or them or upon the trial of such action shall have a verdict pass for him or them every such person shall have judgment for and recover his reasonable costs unless in the case of a trial the judge before whom such cause shall be tried shall certify upon the record under his hand that there was reasonable cause for making such person a defendant in such action.

Defendant's Costs on Demurrer or Error.

15. If any person or persons shall commence or prosecute in any court of record any action plaint or suit wherein upon any demurrer either by plaintiff or defendant demandant or tenant judgment shall be given by the court against such plaintiff or demandant or if at any time after judgment

31 VICTORIE No. 20.
13 & 14 Vic. c. 61
s. 12.
17 Vic. No. 21 s. 173.
2 Pring 1638.

Several cases wherein
the defendant shall
recover his costs
against the plaintiff.
4 Jac. I. c. 3 s. 2.

23 Hen. VIII. c. 15.

He that sueth in
forma pauperis shall
be otherwise
punished.
23 Hen. VIII. c. 15
s. 2.

Defendants having a
nolle prosequi or a
verdict in any action
shall have costs.
25 Vic. No. 13 s. 66.
2 Pring 1607.
3 & 4 Wm. IV. c. 42
s. 32.

Defendant on judg-
ment given for him
&c. to recover costs
and have execution
on the same.
8 & 9 Wm. III. c. 11
s. 2.

31 VICTORIA No. 20. judgment given for the defendant in any such action plaintiff or suit the plaintiff or demandant shall sue any writ or writs of error to annul the said judgment and the said judgment shall be afterwards affirmed to be good or the said writ of error shall be discontinued or the plaintiff shall be nonsuit therein the defendant or tenant in every such action plaintiff or writ of error shall have judgment to recover his costs against every such plaintiff or plaintiffs demandant or demandants and have execution for the same.

Costs on Scire Facias on Default and on Demurrer.

Plaintiff in scire facias and plaintiff or defendant on demurrer to have costs.
25 Vic. No. 13 s. 66.
2 Pring 1607.
3 & 4 Wm. IV. c. 42 s. 34.

16. In all writs of *scire facias* the plaintiff obtaining judgment on an award of execution shall recover his costs of suit upon a judgment by default as well as upon a judgment after plea pleaded or demurrer joined and where judgment shall be given either for or against a plaintiff or demandant or for or against a defendant or tenant upon any demurrer joined in any action whatever the party in whose favor such judgment shall be given shall also have judgment to recover his costs in that behalf.

Costs on several Pleas or Pleadings.

Costs on several pleadings.
4 Anne c. 16 s. 5.

17. Where several matters are pleaded if any such matter shall upon a demurrer joined be judged insufficient costs shall be given at the discretion of the court or if a verdict shall be found upon any issue in the said cause for the plaintiff or demandant costs shall be also given in like manner unless the judge who tried the said issue shall certify that the said defendant or tenant or plaintiff in replevin had a probable cause to plead such matter which upon the said issue shall be found against him.

Costs on Error.—Quashed Writ.

On quashing writ of error defendant to have costs.
4 Anne c. 16 s. 25.

18. Upon the quashing any writ of error the defendants in such error shall recover against the plaintiff or plaintiffs issuing out such writ his costs as he should have had if the judgment had been affirmed and to be recovered in the same manner.

Costs on a Capias ad Respondendum.

The defendant shall recover costs and damages where the plaintiff doth delay or discontinue his suit &c.
8 Eliz. c. 2 s. 2.

19. When and as often as any person and persons shall sue forth or by any means cause or procure to be sued forth of the Supreme Court any writ or writs of *capias ad respondendum* against any person or persons which upon the same writ or writs shall happen to be arrested or which shall appear upon the return of the writ of summons and shall put in his or their bail or bails to answer such suit as shall be objected against him according to the common order of the court then in every such case if the party or parties at whose suit means or procurement the same writ or writs or process was obtained or sued forth do not within three days next after such bail had and taken deliver his or their declaration against the same party or parties against whom such writs or process hath been or shall be sued or if after declaration had and put into the same court the plaintiff in such case shall not prosecute the same with effect but shall willingly and apparently to the same court suffer his or their said suit to be delayed or shall after declaration so had suffer the same suit to be discontinued or otherwise shall be nonsuit in the same then in every such case the judges of the said court for the time being shall by their discretions from time to time as they shall see or perceive any such default to be in the party or parties at whose suit means or procurement such writs

writs or process was sued forth award and judge to every such person 31 VICTORIA No. 20. and persons so arrested vexed molested or troubled by such writs or suit his and their costs damages and charges by any means sustained by occasion of any such writs process arrests or suits taken sued or had against him to be paid by such person or persons that so doth or shall cause or procure any such writs or process to be sued forth as is aforesaid.

20. In all actions wherein the defendant or defendants shall be arrested and held to special bail and wherein the plaintiff or plaintiffs shall not recover the amount of the sum for which the defendant or defendants in such action shall have been so arrested and held to special bail such defendant or defendants shall be entitled to costs of suit to be taxed according to the custom of the court in which such action shall have been brought. Provided that it shall be made appear to the satisfaction of the court in which such action is brought upon motion to be made in court for that purpose and upon hearing the parties by affidavit that the plaintiff or plaintiffs in such action had not any reasonable or probable cause for causing the defendant or defendants to be arrested and held to special bail in such amount as aforesaid and provided such court shall thereupon by rule or order of the same court direct that such costs shall be allowed to the defendant or defendants and the plaintiff or plaintiffs shall upon such rule or order being made as aforesaid be disabled from taking out any execution for the sum recovered in any such action unless the same shall exceed and then in such sum only as the same shall exceed the amount of the taxed costs of the defendant or defendants in such action and in case the sum recovered in any such action shall be less than the amount of the costs of the defendant or defendants to be taxed as aforesaid that then the defendant or defendants shall be entitled after deducting the sum of money recovered by the plaintiff or plaintiffs in such action from the amount of his or their costs so to be taxed as aforesaid to take out execution for such costs in like manner as a defendant or defendants may now by law have execution for costs in other cases.

Defendant entitled to costs where plaintiff shall not recover the amount of the sum for which he was arrested.

43 Geo. III. c. 46 s. 3.

Conditions upon which costs shall be so allowed.

Informer.—Compounding.—Costs.

21. No informer or plaintiff shall or may compound or agree with any person or persons that shall offend or shall be surmised to offend against any penal statute for such offence committed or pretended to be committed but after answer made in court unto the information or suit in that behalf exhibited or prosecuted nor after answer but by the order or consent of the court in which the same information or suit shall be depending upon the pains and penalties hereafter in this present Act set down and declared and if any such informer or plaintiff as aforesaid shall willingly delay his suit or shall discontinue or be nonsuit in the same or shall have the trial or matter passed against him therein by verdict or judgment of law then in every such case the same informer or plaintiff shall yield satisfy and pay unto the party defendant his costs charges and damages to be assigned by the court in which the same suit shall be attempted for the recovery and execution whereof every such defendant shall immediately upon the same costs charges and damages assigned have his writ of execution to be awarded unto him out of the same court in which the same shall be so assigned as is aforesaid as in other cases of execution.

No informer shall compound with the defendant but by consent of the court.
18 Eliz. c. 5 s. 3.

The penalty of an informer delaying or discontinuing his suit or being nonsuit &c.

31 VICTORIA No. 20.

Attorney's Bill of Costs.

Bills to be delivered.

11 Vic. No. 33 s. 1.

2 Pring 1584.

6 & 7 Vic. c. 73 s. 37.

22. No attorney nor any executor administrator or assignee of any attorney or the trustee of his estate shall commence or maintain any action or suit for the recovery of any fees charges or disbursements for any business done by such attorney until the expiration of one month after such attorney or executor administrator or assignee of such attorney shall have delivered unto the party to be charged therewith or sent by the post to or left for him at his counting-house office of business dwelling-house or last known place of abode a bill of such fees charges and disbursements and which bill shall be subscribed by such attorney in his proper handwriting (or in the case of partnership by any of the partners either with his own name or with the name and style of such partnership) or by the executor administrator or assignee of such attorney or the trustee of his estate.

Evidence of delivery of bill.

11 Vic. No. 33 s. 4.

2 Pring 1586.

6 & 7 Vic. c. 73 s. 37.

23. It shall not in any case be necessary in the first instance for such attorney or the executor administrator or assignee of such attorney or trustee of his estate in proving a compliance with this Act to prove the contents of the bill he may have delivered sent or left but it shall be sufficient to prove that a bill of fees charges or disbursements subscribed in the manner aforesaid was delivered sent or left in manner aforesaid but nevertheless it shall be competent for the other party to show that the bill so delivered sent or left was not such a bill as constituted a *bonâ fide* compliance with this Act Provided always that it shall be lawful for any judge of the Supreme Court to authorise an attorney to commence an action or suit for the recovery of his fees charges or disbursements against the party chargeable therewith although one month shall not have expired from the delivery of a bill as aforesaid on proof to the satisfaction of the said judge that there is probable cause for believing that such party is about to quit the colony.

Where party leaving colony.

Taxation of Costs.

Taxation of bills within a month.

11 Vic. No. 33 s. 1.

2 Pring p. 1584.

24. Upon the application of the party chargeable by such bill within such month an appointment for taxation of the same may be obtained as of course and without order of a judge from the master in equity in case the whole of the business contained in such bill shall have been transacted in the Supreme Court in its equitable jurisdiction or in any matter of lunacy or shall relate to conveyancing business from the judge in insolvency in case of the whole of such business contained in such bill shall have been transacted in the Supreme Court in its insolvency jurisdiction and from the prothonotary of the Supreme Court in every other case including criminal business and though the business or part of the business contained in such bill shall not have been transacted in the Supreme Court and thereupon such bill and the demand of such attorney executor administrator trustee or assignee shall be taxed and settled by such officer without any money being brought into court and the Supreme Court or a judge thereof shall restrain such attorney or executor administrator or assignee of such attorney or the trustee of his estate from commencing any action or suit touching such demand pending such taxation and the costs of such taxation shall as hereinafter provided be paid according to the event of such taxation.

Taxation after one month.

11 Vic. No. 33 s. 2.

25. In case no such application as aforesaid shall be made within such month as aforesaid then it shall be lawful for the Supreme Court or a judge

a judge thereof either upon the application of the attorney or the executor administrator or assignee of the attorney or the trustee of his estate whose bill may have been so delivered sent or left as aforesaid or upon the application of the party chargeable by such bill with such directions and subject to such conditions as the court or judge making such reference shall think proper to refer such bill and the demand of such attorney or executor administrator or assignee of such attorney or the trustee of his estate thereupon to be settled and taxed by such officer of the court as aforesaid and in case any such reference as aforesaid shall be made on the application of the party chargeable by such bill then without any money being brought into the court and such court or judge may restrain such attorney or the executor administrator or assignee of such attorney or the trustee of his estate from commencing or prosecuting any action or suit touching such demand pending such reference upon such terms as shall be thought fit Provided always that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such bill after a verdict shall have been obtained judgment signed or a writ of inquiry executed in any action for the recovery of the demand of such attorney or executor administrator or assignee of such attorney or the trustee of his estate or after the expiration of twelve months after such bill shall have been delivered sent or left as aforesaid except under special circumstances to be proved to the satisfaction of the Supreme Court or a judge thereof to whom the application for such reference shall be made.

31 VICTORIAE No. 20.
2 Pring p. 1581.
6 & 7 Vic. c. 73 s. 37.
Taxation after twelve months.

Costs of Taxation.

26. Upon every such appointment or reference if either the attorney or executor administrator or assignee of the attorney or trustee of his estate whose bill shall have been delivered sent or left or the party chargeable with such bill having due notice shall refuse or neglect to attend such taxation the officer to whom such appointment or reference shall be made may proceed to tax and settle such bill and demand *ex parte* and in case any appointment or reference as aforesaid shall be obtained or made upon the application of the party chargeable with such bill or upon the application of such attorney or the executor administrator or assignee of such attorney or trustee of his estate and the party chargeable with such bill shall attend upon such taxation the costs of such appointment or reference shall except as hereinafter provided for be paid for according to the event of such taxation that is to say if such bill when taxed be less by a sixth part than the bill delivered sent or left then such attorney or executor administrator or assignee of such attorney or trustee of his estate shall pay such costs and if such bill when taxed shall not be less by a sixth part than the bill delivered sent or left then the party chargeable with such bill making such application or so attending shall pay such costs and every order to be made for obtaining such appointment or such reference as aforesaid shall direct the officer to whom such reference shall be made to tax such costs of such appointment or reference to be so paid as aforesaid and to certify what upon such taxation shall be found to be due to or from such attorney or executor administrator or assignee of such attorney or trustee of his estate in respect of such bill or demand and of the costs of such appointment or reference (if payable) Provided always that such officer shall in all cases be at liberty to certify specially any circumstances relating to such bill or taxation and the court or judge shall in all cases be

Payment of costs of taxation.
11 Vic. No. 33 s. 3.
2 Pring p. 1585.
6 & 7 Vic. c. 73 s. 37.

31 VICTORIE No. 20. be at liberty to make thereupon such order as such court or judge may think right respecting the payment of the costs of such taxation Provided also that where such reference as aforesaid shall be made as hereinbefore provided then the said court or judge shall be at liberty if it shall be thought fit to give any special directions relative to the costs of such reference And provided further that it shall be lawful for the said court or judge in any case to make such order for the delivery by any attorney or the executor administrator or assignee of any attorney or trustee of his estate of such bill as aforesaid and for the delivery up of deeds documents or papers in his custody possession or power or otherwise touching the same in the same manner as has heretofore been done as regards such attorney by such court or judge where any such business had been transacted in the court.

Court may order delivery of bill and delivery up of deeds.

Mode and Consequences of Taxation.

Skill and responsibility to be considered.
11 Vic. No. 33 s. 5.
2 Pring 1586.

27. In taxing any bill for preparing or drawing any deed contract case or other document it shall be lawful for the taxing officer and he is hereby required in estimating the proper sum to be charged for such transaction to consider the skill and labor properly employed and the expense and responsibility incurred in the preparation thereof.

Assistance of prothonotary.
11 Vic. No. 33 s. 12.
2 Pring 1587.
6 & 7 Vic. c. 73 s. 42.

28. In all cases in which such bill shall have been referred to be taxed and settled by the prothonotary of the Supreme Court such officer shall be at liberty to request the master in equity to assist him in taxing and settling any bill or any part of such bill and such officer so requested shall thereupon proceed to tax and settle the same and shall have the same powers in respect thereof as upon a reference to him and shall return the same with his opinion thereon to the prothonotary.

Form of application for taxing.
11 Vic. No. 33 s. 12.
2 Pring 1587.
6 & 7 Vic. c. 73 s. 43.

29. All applications made under this Act to refer any such bill as aforesaid to be taxed and settled and for the delivery of such bill and for the delivery up of deeds documents and papers shall be made in the matter of such attorney and upon the taxation or re-taxation and settlement of any such bill the certificate of the officer by whom such bill shall have been taxed shall (unless set aside or altered by order decree or rule of court) be final and conclusive as to the amount thereof and payment of the amount certified to be due and directed to be paid may be enforced according to the course and practice of the Supreme Court and it shall be lawful for such court or a judge thereof to order judgment to be entered up for such amount with costs unless the retainer shall be disputed or to make such other order thereon as such judge shall deem proper.

Certificate of officer.

Enforcement of payment.

Taxation on behalf of Third Parties.

Third parties applying for taxation.
11 Vic. No. 33 s. 6.
2 Pring 1586.
6 & 7 Vic. c. 73 s. 38.

30. Where any person not the party chargeable with any such bill within the meaning of the provisions hereinbefore contained shall be liable to pay or shall have paid such bill either to the attorney his executor administrator or assignee or the trustee of his estate or to the party chargeable with such bill as aforesaid it shall be lawful for such person his executor administrator or assignee or the trustee of his estate to make such application for a reference for the taxation and settlement of such bill as the party chargeable therewith might himself make and the same reference and order shall be made thereupon and the same course pursued in all respects and if such application was made by the party so chargeable with such bill as aforesaid Provided always that in case such application is made when under the provision herein contained a reference is not authorised

authorised to be made except under special circumstances it shall be lawful for the court or judge to whom such application shall be made to take into consideration any additional special circumstances applicable to the person making such application although such circumstances might not be applicable to the party so chargeable with the said bill as aforesaid if he was the party making the application.

31. It shall be lawful in any case in which a trustee assignee executor or administrator has become chargeable with any such bill as aforesaid for a judge of the Supreme Court if in his discretion he shall think fit upon the application of a party interested in the property out of which such trustee assignee executor or administrator may have been paid or be entitled to pay such bill to refer the same and such attorney's or executor's administrator's or assignee's demand or the demand of the trustee of his estate thereupon to be taxed and settled by the proper officer aforesaid with such directions and subject to such conditions as such judge shall think fit for the payment of what may be found due and of the costs of such reference to or by such attorney or the executor administrator or assignee of such attorney or the trustee of his estate by or to the party making the application having regard to the provisions herein contained relative to applications for the like purpose by the party chargeable with such bill so far as the same shall be applicable to such cases and in exercising such discretion as aforesaid the said judge may take into consideration the extent and nature of the interest of the party making such application. Provided always that where any money shall be so directed to be paid by such attorney or the executor administrator or assignee of such attorney or the trustee of his estate it shall be lawful for such judge if he shall think fit to order the same or any part thereof to be paid to such trustee assignee executor or administrator so chargeable with such bill instead of being paid to the party making such application and when the party making such application shall pay any money to such attorney or executor administrator or assignee of such attorney or the trustee of his estate in respect of such bill he shall have the same right to be paid by such trustee assignee executor or administrator so chargeable with such bill as such attorney or executor administrator or assignee of such attorney or the trustee of his estate had.

32. For the purpose of any such reference upon the application of the person not being the party chargeable within the meaning of the provisions of this Act as aforesaid or of a party interested as aforesaid it shall be lawful for the Supreme Court or a judge thereof to order any such attorney or the executor administrator or assignee of any such attorney or the trustee of his estate to deliver to the party making such application a copy of such bill upon payment of the costs of such copy.

Limitation.

33. The payment of any such bill as aforesaid shall in no case preclude the court or judge from referring such bill for taxation if the special circumstances of the case shall in the opinion of such court or judge appear to require the same upon such terms and conditions and subject to such directions as to such court or judge shall seem right. Provided always that the application for such reference be made within twelve calendar months after payment.

31 VICTORIA No. 20.

Retaxation.

Re-taxation.

11 Vic. No. 33 s. 9.

2 Pring 1587.

6 & 7 Vic. c. 73 s. 40.

Review of taxation.

Registrar on order to
review taxation may
examine witnesses.Punishment of an in-
former misbehaving
himself in the prose-
cution of his suit &c.
18 Eliz. c. 5 s. 4.

34. No bill which shall have been previously taxed and settled either under an appointment or order of reference shall be again referred unless under special circumstances the court or judge to whom such application is made shall think fit to direct a re-taxation. Provided nevertheless that where a bill of costs shall have been taxed an order for review of the taxation may be made after rule or summons to show cause by the Supreme Court or a judge thereof and it shall be lawful for such court or judge in case they or he shall think fit thereupon to direct the proper officer aforesaid to review and correct such taxation instanter and whether the order applied for be granted or refused the costs of the application shall be in all cases in the discretion of the court or judge and on an order for a review of taxation it may be made part of the order that the Registrar do or may examine witnesses *viva voce* touching any matter in question.

Pains and Penalties.

35. Any informer or plaintiff who shall or may compound or agree as in section twenty-one hereof mentioned shall from and after conviction thereof for ever be disabled to pursue or be plaintiff or informer in any suit or information upon any statute popular or penal and shall also for every such offence forfeit and lose ten pounds of lawful money the one half thereof to the Queen's Majesty her Heirs and Successors and the other half to the party grieved thereby to be recovered in the Supreme Court or a district court by action of debt or information.

*Powers of the Court.*General rules may
be made by the
judges.

17 Vic. No. 21 s. 174.

2 Pring p. 1638.

15 & 16 Vic. c. 76

s. 223.

27 Vic. No. 14 s. 20.

3 Pring 316.

Separate scales of
costs.

20 Vic. No. 8. s. 3.

2 Pring 1752.

36. It shall be lawful for the judges of the Supreme Court or a majority of them of whom the Chief Justice shall be one from time to time to make all such general rules and orders for the effectual execution of this Act and of the intention and object hereof and for fixing the costs to be allowed for and in respect of the matters herein contained and the performance thereof and for apportioning the costs of issues and also for altering the number of days by this Act limited for the return of any writ or for the doing of anything by this Act prescribed or authorised to be done and substituting other days for the same as in their judgment shall be necessary or proper and if they shall see fit so to do to establish separate scales of costs in actions having regard severally to the amount sued for or the value of the matter sought to be recovered. Provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said court or the judges thereof to make rules or orders or otherwise to regulate and dispose of the business therein.

*Commencement and Short Title.*Commencement of
Act.

Short title.

37. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the *Costs Act of 1867*.

An Act to Consolidate and Amend the Laws relating to District Courts.

31 VICTORIE No. 30.

[28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws relating to District Courts Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Preamble.

Interpretation.

1. In construing this Act the term "district" shall if not inconsistent with the context be taken to mean some district in and for which a district court is holden and the term "landlord" shall be understood to signify the person entitled to the immediate reversion of the premises or if the property be held in joint tenancy coparcenary or tenancy in common shall be understood to signify any one of the persons entitled to such reversion and the words "quarter sessions" shall include general sessions and the word "suit" may be applied to any action or other proceeding.

Interpretation clause.
22 Vic. No. 18 s. 1.
1 Pring 496.

Mode of Establishing Courts and Districts.

2. It shall be lawful for the Governor in Council from time to time to order by proclamation in the *Gazette* that courts to be called District Courts shall be holden at such towns and places as he shall think fit and to alter the place for holding any such court or to order that the holding of any such court be discontinued.

Establishment of
District Courts.
22 Vic. No. 18 s. 2.
1 Pring 496.

3. It shall be lawful for the Governor in Council to divide the colony into districts for the purposes of this Act and from time to time to alter such districts Provided always that no alteration in the boundaries or limits of any district shall take effect until after three months from the notification thereof in the *Gazette*.

Creation of districts.
22 Vic. No. 18 s. 3.
1 Pring 496.

4. It shall be lawful for the Governor in Council from time to time to define the limits within which each of the courts appointed to be held shall have jurisdiction Provided always that no alteration in any such limits shall take effect until after three months from the notification thereof in the *Gazette*.

Governor may
appoint districts for
each court.
29 Vic. No. 10 s. 18.

Conterminous Districts.

5. For the prevention of disputes as to the jurisdiction of the District Courts severally in cases where it may be difficult to ascertain within which of two districts a particular place is situated and in order to facilitate the execution of process including the service of summonses in such places Be it enacted That for the space of two miles on either side of the boundary between two adjacent districts the court holden in and for each of such districts shall for the purposes of this Act be deemed to have jurisdiction Provided that the pendency of a suit in one of such courts or a judgment recovered therein shall be a bar to a suit in the other court between the same parties for the same cause.

Jurisdiction along
the borders of con-
terminous districts.
22 Vic. No. 18 s. 110.
1 Pring 515.

District

31 VICTORIE No. 30.

Judge to hold court
where directed and to
give notice thereof.
22 Vic. No. 18 s. 45.
1 Pring 503.

District Courts.

6. The judge of each District Court shall attend and hold such court at the place where the Governor in Council shall have ordered that the court shall be holden at such times as such judge shall appoint for that purpose so that a court shall be holden in such place once at least in such interval as the Governor in Council shall in each case order and notice of the days on which the court will be holden shall be put up in some conspicuous place in the courthouse and in the office of the registrar of the court and shall be otherwise published as to the judge shall seem best. Provided that where by reason of the death or absence of the judge at any District Court at the time appointed such court cannot be then held the registrar or in the event of his death or absence the bailiff shall adjourn the court to such day as he may deem convenient and enter in the minute book the cause of such adjournment.

District Courts to be
courts of record.
22 Vic. No. 18 s. 4.
1 Pring 496.

7. Every District Court shall be a court of record and shall have jurisdiction as hereinafter provided.

Seal of the Court.

Seal of the court.
22 Vic. No. 18 s. 44.
1 Pring 503.

8. For every court holden under this Act there shall be a seal and all notices summonses certificates warrants and other process issued by the registrar of the court shall be sealed or stamped with the seal of the court and every person who shall forge the seal of any process of the court or who shall serve or enforce any such forged process knowing the same to be forged or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of such court knowing the same to be false shall be guilty of felony and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years or be imprisoned for any term not exceeding three years with or without hard labor.

Punishment for
forging seal or serving
forged process.

Judges.

Appointment and
qualification of
judges.
22 Vic. No. 18 s. 27.
1 Pring 500.

9. The Governor in Council shall by commissions in Her Majesty's name appoint as many fit persons as are needed to be judges of the District Courts under this Act each of whom shall be a barrister-at-law of five years' or an attorney-at-law of seven years' standing and every such person may be appointed by one commission for several courts or by several commissions for each or any number of such courts. Provided that no barrister or attorney shall be so appointed unless he shall have been in practice or have held some judicial or legal office under the Crown within two years immediately preceding the appointment to such office.

Judges not to practice
or sit in Parliament.
22 Vic. No. 18 s. 28.
1 Pring 500.
29 Vic. No. 10 s. 13.

10. No judge of a District Court shall practice at the bar or as a crown prosecutor or as an equity draftsman pleader or conveyancer or as an attorney solicitor proctor or notary or be directly or indirectly concerned or interested in any such practice profession or business and no such judge shall be capable of being summoned or being elected or of sitting as a member of the Legislative Council or Legislative Assembly.

Judge to reside in
the district of which
he is judge.
29 Vic. No. 10 s. 15.

11. Every judge of a District Court shall reside within the limits of the district or jurisdiction of the court of which he is the judge.

Judges' tenure of office
and removal there-
from.
22 Vic. No. 18 s. 29.
1 Pring 500.

12. The judges of the said District Courts shall hold their offices during ability and good behaviour and shall severally be paid (exclusive of any allowance for travelling expenses) an annual salary not less than the sum of one thousand pounds which sum shall not be diminished during the continuance of such person in the office of District Court judge but it shall

shall be lawful for the Governor in Council to remove any judge for inability or misbehaviour. Provided that twenty-one days at the least before such removal the judge shall have notice of the intention to remove him and that he shall thereafter and before removal have the opportunity of being heard before the Governor and Council in his defence and it shall also be lawful for the Governor in Council to remove any judge appointed under this Act for the purpose of appointing him to some other District Court. Provided also that if any District Court shall be abolished whether by consolidation with any other District Court or otherwise no judge or other officer of such District Court shall be entitled to any compensation on account of ceasing to hold his office.

Deputy Judge.

13. In case of illness or absence it shall be lawful for the Governor in Council to appoint some other person who shall be a judge appointed under this Act or who shall be a barrister-at-law or attorney to act as the deputy of any District Court judge during such illness or absence.

Deputy judge.
22 Vic. No. 18 s. 30.
1 Pring 501.

Jurors in General.

14. The persons qualified and liable to act as jurors for the trial of issues criminal and civil and for the assessment of damages respectively under the provisions of the Jury Act or the law in that behalf for the time being shall be the persons qualified and liable to act as jurors in courts holden under this Act and when such courts shall be holden in assize or circuit towns the jury books made out under such Act or law by the sheriff or a copy thereof shall be the jury book for such District Courts and for the purposes of the establishment of jurors' districts and the preparation of jurors' lists every place in which a District Court shall be held shall be deemed to be a court town within the meaning of such Act or law and where the place in which a District Court shall be held shall not be an assize or circuit town jury lists shall be prepared published and corrected according to the provisions therein contained but such lists when corrected shall be transmitted by the clerks of the benches to the judge of such District Court who shall thereupon prepare a jurors' book for such court according to the said Act as nearly as may be and his duties in that behalf shall be the same as those of the sheriff save that it shall not be necessary for the said judge to provide the boxes for jury cards mentioned in the tenth section thereof.

Who shall be jurors.
22 Vic. No. 18 s. 51.
1 Pring 504.

11 Vic. No. 20.
1 Pring 744.

15. In case the Governor in Council shall by any proclamation or proclamations order a District Court or courts or any court of general or quarter sessions of the peace to be holden at any town or place where provision shall not have been theretofore made for the preparing and settling of the jury lists for such town or place it shall be lawful for the said Governor in Council to direct the bench of magistrates of the district wherein such town or place shall be situate to cause jury lists for such town or place to be prepared and thereupon the said bench of magistrates shall in pursuance of such direction and they are hereby authorised and required to prepare and cause to be prepared within three months after the receipt of any such direction lists of all jurors within the jurors' district for such town or place and thereupon the clerks of petty sessions constables officers of police and justices shall do and perform within the said period of three months all such acts matters and things in and towards preparing correcting

Jury lists for newly created districts.
22 Vic. No. 18 s. 52
1 Pring 504.

31 VICTORIA No. 30. correcting and allowing the jury lists as are in the said last mentioned Act required to be ordinarily done in certain months in each and every year and all such jury lists when prepared corrected and allowed as aforesaid shall be transmitted by the clerks of the benches to the District Court judge Provided that any jury list prepared under the direction of the Governor in Council pursuant to this section shall have effect and the same shall continue in force until a new list shall be prepared under the said Act or law and this Act.

Jurors' book to be made therefrom.
22 Vic. No. 18 s. 53.
1 Pring 505.

16. The District Court judge shall within ten days from the receipt of the jury lists cause to be made out therefrom a jurors' book for such court according to the provisions of the said Act or law so far as the same can be applied and all such jury lists when settled shall come into force and the persons whose names shall be therein set down shall be liable to serve as jurors immediately after the jurors' book for such newly appointed town or place as aforesaid shall have been made out by the District Court judge and each of the said lists shall respectively continue in force until new lists shall have been allowed and a new jurors' book shall have been made out under the provisions hereinbefore contained.

Jurors' lists in newly proclaimed districts.
29 Vic. No. 10 s. 17.

17. It shall be lawful for the Governor in Council from time to time to order by proclamation in the *Gazette* that the provisions of the Jury Act or Acts in force for the time being and of this Act relating to the constituting and procuring of juries shall extend and apply to such districts as shall from time to time have been proclaimed as districts under the provisions of the District Courts Act or Acts for the time being and thereupon jurors' lists shall be prepared published and corrected for the several towns and places in such districts respectively at which district courts shall have been ordered to be holden and all the other provisions contained in the said Acts relating to the constituting and procuring of juries which are applicable thereto shall extend and apply to such districts and the towns and places therein.

Registrar.

Appointment and salary of registrar.
22 Vic. No. 18 s. 32.
1 Pring 501.

18. For every District Court there shall be a registrar whom the Governor in Council shall appoint and may remove and every such registrar shall be paid by salary and it shall be lawful for the Governor as aforesaid in populous districts in which it shall appear to be expedient to appoint two persons to execute jointly the office of registrar under such regulations as to the division of their duties and the emoluments of the said office as shall be from time to time made by order of court in case of difference between them.

Deputy registrar.
22 Vic. No. 18 s. 33.
1 Pring 501.

19. It shall be lawful for the registrar of any such court with the approval of the judge or in case of inability of the registrar to make such appointment for the judge to appoint from time to time a deputy to act for the registrar of the said court at any time when he shall be prevented by illness or absence from acting in such office and to remove such deputy at his pleasure and such deputy while acting under such appointment shall have the like powers and be subject to the like provisions duties and penalties for misbehavior as if he were the registrar of the said court for the time being and in case of the death or removal of such registrar whilst his deputy is acting such deputy shall continue to act until a successor to such registrar shall be appointed and he shall receive as remuneration for his services during the period he may so act after the death

death or removal of the registrar a rateable proportion of the salary attached to the office of registrar. 31 VICTORIA No. 30.

20. On the death or removal of a registrar, who shall not have appointed a deputy the judge may for a period not exceeding three months provisionally appoint a person to discharge the duties of registrar and such person shall act as and have all the rights and liabilities of a registrar until a permanent successor shall be appointed and shall receive as remuneration for his services during the period he may so act a rateable proportion of the salary attached to the office of registrar. Judge to appoint deputy registrar provisionally if one had not been appointed. 22 Vic. No. 18 s. 31. 1 Pring 501.

21. The registrar of each court shall sign and issue all summonses and warrants and register all records orders and judgments of the said court and keep an account of all proceedings of the court and shall take charge of and keep an account of all court fees and fines payable or paid into court and of all moneys paid into and out of court and shall enter an account of all such fees fines and moneys in a ledger belonging to the court to be kept by him for that purpose and shall at such times as the Governor in Council shall direct submit his accounts to be audited and settled by the judge. Duties of registrars. 22 Vic. No. 18 s. 35. 1 Pring 501.

22. The registrar of every District Court shall cause a note of all complaints and summonses and of all orders and of all judgments and executions and returns thereto and of all fines and of all other proceedings of the court to be fairly entered from time to time in books belonging to the court which shall be kept at the office of the court and such entries in the said books or a copy thereof bearing the seal of the court and purporting to be signed and certified as a true copy by the registrar shall at all times be admitted in all courts and places whatsoever as evidence of such entries and of the proceeding referred to by such entry or entries and of the regularity of such proceedings without any further proof. Minutes of proceedings to be kept. 29 Vic. No. 10 s. 24.

23. Each registrar to be appointed under this Act shall within one month after the first day of March in every year prepare a return to be certified under his hand and within the like time transmit the same to the Colonial Secretary which return shall specify— Registrars to prepare returns. 22 Vic. No. 18 s. 103. 1 Pring 514.

- (1.) The number of suits commenced in his court during the twelve months preceding
- (2.) The number settled without hearing
- (3.) The number of trials
- (4.) The result of the trials whether in favor of the plaintiffs or defendants
- (5.) The nature of the causes under distinct heads
- (6.) The costs of the suits
- (7.) The number of appeals
- (8.) The number of judgments or orders affirmed
- (9.) The number reversed
- (10.) The number of cases left in arrear
- (11.) The date place and duration of the sittings of each court the duration to be specified in days and hours
- (12.) The number of cases tried by jury
- (13.) The number of cases tried without a jury
- (14.) The number of cases settled by arbitration
- (15.) The number of motions for new trials
- (16.) The number of new trials granted
- (17.) The grounds on which such new trials were granted

And

31 VICTORIE No. 30. And a copy of such return shall be laid before each House of Parliament.

When a clerk of petty sessions is registrar of a District Court his successor deputy or *locum tenens* shall be registrar of District Court.

30 Vic. No. 5 s. 1.

Proviso.

24. Whenever the clerk of any court of petty sessions shall have been appointed registrar of a District Court holden at the town or place where he is such clerk the successor in office of such clerk or any deputy of such clerk or any person for the time being performing the duties of clerk of such court of petty sessions shall have and may exercise all the rights powers and duties of registrar of such District Court for such time and so long as he is performing the duties of clerk of such court of petty sessions. Provided that nothing herein contained shall affect the power of appointment now vested in the Governor in Council.

Bailiffs.

Appointment of bailiffs and bailiffs' assistants.

22 Vic. No. 18 s. 36.
1 Pring 501.

25. For every such court there shall be one or more bailiffs whom the judge shall by order under his hand appoint and may remove by like order and every such bailiff may subject to the restriction hereinafter contained by any writing under his hand appoint a sufficient number of able and fit persons not exceeding such number as shall be from time to time allowed by the judge to be officers to assist the said bailiff and at his pleasure dismiss all or any of them and appoint others in their stead and every officer so appointed may also be suspended or dismissed by the judge.

Bailiffs' assistants may act after the death or removal of bailiff.

22 Vic. No. 18 s. 37.
1 Pring 502.

26. The death or removal of any bailiff shall not invalidate the acts of any officers so appointed to assist such bailiff as aforesaid but they shall continue to act until they shall be dismissed by the successor to the bailiff or by the judge and they shall be paid for their services during the period they shall so act after the death or removal of the bailiff the same salary or wages as they were receiving at the date of such death or removal and such salary or wages shall be paid out of the salary and allowances attached to the office of bailiff.

Duties of bailiffs.

22 Vic. No. 18 s. 38.
1 Pring 502.

27. The said bailiffs or one of them shall if required by the judge attend every sitting of the court and shall within their own districts respectively by themselves or by the officers appointed to assist them as aforesaid serve all summonses and shall execute all the warrants and writs issued out of any District Court and the said bailiffs and officers shall in the execution of their duties conform to all such general rules as shall be from time to time made for regulating the proceedings and practice of the court as hereinafter provided and subject thereunto to the order and direction of the judge of the district in which the process is to be served or executed. Provided that no summons or other process (other than process of execution) shall be so served or executed in any district other than that in which it issued until indorsed by the registrar of the district within which the same is sought to be served or executed. Provided also that any summons wheresoever issued may be served by the plaintiff if he shall think fit or any competent person employed by him in any district without any such indorsement.

Remuneration of bailiffs.

22 Vic. No. 18 s. 39.
1 Pring 502.

28. Every such bailiff shall receive a salary on account of the service of summonses and of his general duties other than in the execution of warrants and of writs of execution and the said bailiffs shall be entitled to receive and retain for their own use all fees and sums of money allowed as hereinafter mentioned in the name of fees payable to the bailiff out of which they shall provide for the execution of the duties for which
such

such fees are allowed and for the payment of the officers appointed to assist them and the fees upon execution shall be paid by the registrar of the court to the bailiff upon the return of the writ of execution but not before and every such bailiff shall be responsible for all the acts and defaults of himself and of the officers appointed to assist him in like manner as the sheriff of Queensland is responsible for the acts and defaults of himself and his officers. Provided always that in every court holden under this Act in which the fees allowed to be taken by the bailiffs of the court shall appear to be more than sufficient it shall be lawful for the Governor in Council to order that a certain specified part only of their fees shall be retained by them and in that case and so long as such order shall be in force the amount of the residue of such fees shall be accounted for paid and applied in the same manner as all other fees payable to such registrar.

Disabilities and Security of Officers.

29. It shall not be lawful for the registrar of any District Court or the partner of such registrar or any person in the service of such registrar or his partner except as hereinafter mentioned to act as bailiff of the court or for the bailiff his partner or clerk or any person in the service or employment of such bailiff or his partner to act as registrar of any such court and no officer of the court shall either by himself or by his partner be directly or indirectly concerned as attorney or agent for any party in any proceeding in any such court and any person committing any such offence shall forfeit the sum of one hundred pounds and full costs of suit to any person who shall sue for the same.

30. The registrar and bailiff of every District Court who may receive any moneys in the execution of his duty shall give security for such sum and in such manner and form as the Governor in Council from time to time shall order for the due performance of their several offices and for the due accounting for and payment of all moneys received by them under this Act or which they may become liable to pay for any misbehaviour in their office.

Counsel Attorneys and Agents.

31. No privilege shall be allowed to any attorney solicitor or other person to exempt him from the provisions of this Act.

32. All attorneys on the roll of the Supreme Court shall be allowed to practice and act as counsel and be heard in all criminal matters before the said district courts in the same manner as barristers.

33. It shall be lawful for every party to an action or other proceeding under this Act or a barrister or attorney of the Supreme Court retained by or on behalf of the party on either side (but without any right of exclusive audience or pre-audience) or for any other person allowed by special leave of the judge in each case to appear instead of the party to address the court and examine and cross-examine the witnesses but subject to such regulations as the judge may from time to time prescribe for the orderly transaction of the business of the court. Provided always that no person not being a barrister or attorney of the Supreme Court shall be entitled to receive or recover or shall receive directly or indirectly any sum of money or other remuneration for appearing or acting on behalf of any other person in the said District Court.

31 VICTORIA No. 30.

Disabilities of registrar and bailiff.
22 Vic. No. 18 s. 40.
1 Pring 502.

Registrar and bailiff to give security.
22 Vic. No. 18 s. 41.
1 Pring 503.

Privilege.
22 Vic. No. 18 s. 18.
1 Pring 498.

Attorneys to be as counsel in district courts.
29 Vic. No. 10 s. 14.

Appearance to be in person or by counsel or attorney or other person allowed by the judge.
22 Vic. No. 18 s. 62.
1 Pring 506.

31 VICTORIA No. 30.

Power of committal
for contempt.
29 Vic. No. 10 s. 25.

Authority of Judges.

34. If any person shall wilfully insult the judge or any juror or any registrar bailiff or other officer of the District Court for the time being during his sitting or attendance in court or in going to or returning from the said court or shall wilfully interrupt the proceedings of the court or otherwise misbehave in court it shall be lawful for any bailiff or officer of the court with or without the assistance of any other person by order of the judge to take such offender into custody and detain him till the rising of the court and the judge shall be empowered if he shall think fit by a warrant under his hand and sealed with the seal of the court to commit any such offender to any gaol or lock-up nearest to the said court for any time not exceeding forty-eight hours or to impose on such offender a fine not exceeding five pounds for every such offence and in default of payment to commit the offender to any such prison as aforesaid for any time not exceeding forty-eight hours unless the said fine be sooner paid.

Jurisdiction over Realty.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.
22 Vic. No. 18 s. 19.
1 Pring 498.

35. When the term or interest of the tenant of any land held by him for any term of years or for any less estate or interest either with or without being liable to the payment of any rent shall have expired by effluxion of time or shall have been determined by notice to quit or demand of possession and such tenant or any person claiming under him shall actually occupy such land or any part thereof and shall neglect or refuse to give up possession thereof the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same and thereupon a summons shall issue to such tenant or such person so neglecting or refusing and if the defendant shall not at the time named in the summons show good cause to the contrary then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof and of the service of the summons if the defendant shall not appear thereto the judge of the court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the judge shall think fit to name and if such order be not obeyed the registrar of the court whether such order can be proved to have been served or not shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits.
22 Vic. No. 18 s. 20.
1 Pring 499.

36. In any such plaint against a tenant as in the last preceding section is specified the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.
22 Vic. No. 18 s. 21.
1 Pring 499.

37. When the rent of any corporeal hereditaments where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year shall for one half-year be in arrear and the landlord shall have right by law to re-enter for the non-payment thereof he may without any formal demand or re-entry enter a plaint in the District Court nearest to the premises for the recovery of the premises and

and thereupon a summons shall issue to the tenant the service whereof shall stand in lieu of a demand and re-entry and if the tenant shall five clear days before the return day of such summons pay into court all the rent in arrear and the costs the said action shall cease but if he shall not make such payment and shall not at the time named in the summons show good cause why the premises should not be recovered then on proof of the yearly value and rent of the premises and of the fact that one half-year's rent was in arrear before the plaint was entered and that no sufficient distress was then to be found on the premises to countervail such arrear and of the landlord's power to re-enter and of the rent being still in arrear and of the service of the summons if the defendant shall not appear thereto the judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day not being less than fourteen days from the day of hearing as the judge shall think fit to name unless within that period all the rent in arrear and the costs be paid into court and if such order be not obeyed and such rent and costs be not so paid the registrar shall whether such order can be proved to have been served or not at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the court to give possession of such premises to the plaintiff and the plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy and the defendant and all persons claiming by through or under him shall so long as the order of the court remains unreversed be barred from all relief in equity or otherwise.

38. Where any summons for the recovery of a tenement as is hereinbefore specified shall be served on or come to the knowledge of any sub-tenant of the plaintiff's immediate tenant such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord to be recovered by such landlord by action in the court from which summons shall have issued and such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend.
22 Vic. No. 18 s. 22.
1 Pring 499.

39. A summons for the recovery of a tenement may be served like other summonses to appear to plaints in District Courts and if the defendant cannot be found and his place of dwelling shall either not be known or admission thereto cannot be obtained for serving any such summons a copy of the summons shall be posted on some conspicuous part of the premises sought to be recovered and such posting shall be deemed good service on the defendant.

In plaints to recover possession of premises how summonses may be served.
22 Vic. No. 18 s. 106.
1 Pring 515.

Civil Jurisdiction.

40. The several courts appointed to be held at towns and places within such districts respectively shall have jurisdiction when the defendant or one of two or more defendants as the case may be shall be resident within the districts for which such courts respectively shall be ordered to be held. Provided that no defendant except as hereinafter provided shall be compellable to appear except at the nearest District Court held under this Act to the petty sessions district in which he shall be resident.

Limits of jurisdiction generally in civil matters.
22 Vic. No. 18 s. 5.
1 Pring 497.

41. Provided

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Exceptions where
debt expressly made
payable in district
other than that
of defendant's own
residence or where
defendant removes
after contracting lia-
bility.

22 Vic. No. 18 s. 6.
1 Pring 497.

41. Provided always that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum at a particular place specified the plaintiff may if he shall think fit cause such defendant to be summoned to the court within the jurisdiction of which the place so specified shall be. Provided also that if any party after having in one place contracted a debt or become liable for any damages recoverable in any District Court shall by removal become resident within the jurisdiction of any other such court previously to the issuing of a summons for the recovery of such debt or damages it shall be lawful for the plaintiff if he shall think fit to cause such defendant to be summoned to the court holden for the district within the jurisdiction of which such debt or liability for damages arose.

In personal actions.

22 Vic. No. 18 s. 7.
1 Pring 497.

42. All pleas of personal actions wherein the amount claimed is not more than two hundred pounds whether on balance of account or after an admitted set-off or otherwise may be holden in the courts established under this Act. Provided always that no such court shall have cognizance of any action in which the title to land or the validity of any devise bequest or limitation under any will or settlement shall be in question or shall have jurisdiction in any action for seduction. Provided nevertheless that if such title as aforesaid shall incidentally come in question in any action the court shall have power to decide the claim which it is the immediate object of the action to enforce but the judgment of the court shall not be evidence of title between the parties or their privies in any other action in that court or in any proceedings in any other court.

In cases of partner-
ship intestacy and
legacy.

22 Vic. No. 18 s.
1 Pring 497.

43. The jurisdiction of the District Courts under this Act shall extend to the recovery of any demand not exceeding the sum of two hundred pounds which is the whole or part of the unliquidated balance of a partnership account or the amount or part of the amount of the distributive share under an intestacy or of any legacy under a will.

Consent jurisdiction.

22 Vic. No. 18 s. 9.
1 Pring 497.

44. If both parties agree by a memorandum signed by them or by their attorneys that the District Court holden at any particular place shall have power to try any action which might be brought in the Supreme Court the said District Court shall have jurisdiction to try such action. Provided that such memorandum shall state that the parties signing the same knew that such action was not triable within the jurisdiction of the District Court without such consent and provided that such memorandum shall be filed with the registrar of the said court at the time of filing the plaint.

Civil Procedure.

Trial.

22 Vic. No. 18 s. 47.
1 Pring 504.

45. The judge of the District Court shall be the sole judge in all actions or proceedings in the said court and shall determine all questions of law and unless a jury be summoned all questions also of fact.

Power of judge to
change venue.

22 Vic. No. 18 s. 58.
1 Pring 506.

46. If a judge of a District Court shall be satisfied that any cause pending in his court can be more conveniently or fairly tried in some other district court he shall order that the venue be changed and that the cause be sent for hearing to such other District Court or if the judge shall be interested in the matter of any cause pending in his court he shall order that the venue be changed and that the cause be sent for hearing to the nearest District Court of which he is not the judge and in either case the registrar of the court in which the plaint was entered shall forthwith transmit by post to the registrar of the court to which the cause is to be sent

sent a certified copy of the plaint as entered in the plaint book the duplicate copy of the summons and particulars served on the defendant and a certified copy of the order for changing the venue and the judge of such last mentioned court shall appoint a day for the hearing notice whereof shall be sent by post or otherwise by the registrar to both parties.

Joinder and Severance of Causes of Action.

47. Two or more causes of action provided they be by and against the same parties and in the same rights may be joined in the same suit in a District Court but the court shall have power to prevent the trial of different causes of action together if such trial would in the opinion of the court be inexpedient or inconvenient and in such case may order separate trials to be had.

48. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts but any plaintiff having a cause of action for more than the amount for which a plaint might be entered under this Act may abandon the excess (which abandonment shall be stated upon the plaint) and thereupon the plaintiff shall on proving his case recover to an amount not exceeding two hundred pounds and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action and entry of the judgment of the court shall be made accordingly.

49. In case any defendant shall have given two or more bills of exchange promissory notes bonds or other securities for any debt or sum originally exceeding the amount of two hundred pounds it shall be lawful for the plaintiff to sue upon each of such securities not exceeding in amount two hundred pounds as forming a distinct cause of action.

Parties.

50. In any proceedings under this Act by a man and his wife for an injury done to the wife in respect of which she is necessarily joined as a co-plaintiff or complainant it shall be lawful for the husband to add thereto claims in his own right provided that in the case of the death of either of them such suit or complaint so far only as relates to the causes of action if any which do not survive shall abate.

51. Where any plaintiff shall have any demand recoverable under this Act against two or more persons jointly answerable it shall be sufficient if any one or more of such persons be served with process and judgment may be obtained and execution issued against the person or persons so served notwithstanding that others jointly liable may not have been served or sued or may not be within the jurisdiction of the court and every such person against whom judgment shall have been obtained under this Act and who shall have satisfied the whole or any part of such judgment shall be entitled to demand and recover in the District Court under this Act contribution from any other person jointly liable with him.

52. It shall be lawful for any executor or administrator to sue and be sued in any District Court in like manner as if he were a party suing or sued in his own right and judgment and execution shall be such as in the like case would be given or issued in the Supreme Court.

53. It shall be lawful for any person not of the age of twenty-one years to sue in any District Court in his own name for the recovery of any sum of money not exceeding two hundred pounds which may be due to him

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Joinder of causes of action.
22 Vic. No. 18 s. 11.
1 Pring 497.

Splitting demands.
22 Vic. No. 18 s. 12.
1 Pring 498.

Splitting debt by giving bills &c.
22 Vic. No. 18 s. 13.
1 Pring 498.

Proceedings by husband and wife.
22 Vic. No. 18 s. 10.
1 Pring 497.

One of several persons jointly liable may be sued.
22 Vic. No. 18 s. 17.
1 Pring 498.

Executors.
22 Vic. No. 18 s. 14.
1 Pring 498.

Infants.
22 Vic. No. 18 s. 15
1 Pring 498.

31 VICTORIA No. 30. him for wages or piecework or for work or services as a clerk servant mechanic or laborer in the same manner as if he were of full age.

Actions by physi-
cians &c.
22 Vic. No. 18 s. 16.
1 Pring 498.

54. Any doctor of medicine or other legally qualified practitioner in medicine may sue for the recovery of any fees or other remuneration as such practitioner in like manner as any debt or other demand may be recovered by any surgeon or other person under this Act.

Pleading.

Proceedings in civil
suits.
22 Vic. No. 18 s. 46.
1 Pring 504.

55. On the application of any person desirous of bringing an action under this Act the registrar of the court shall enter in a book to be kept for this purpose in his office a plaint in writing stating the names and the last known places of abode of the parties and the substance of the action intended to be brought every one of which plaints shall be numbered in every year according to the order in which it shall be entered and thereupon a summons stating the substance of the action and bearing the number of the plaint on the margin thereof shall be issued under the seal of the court according to such form and be served on the defendant at such time and in such manner as shall be directed by the rules made for regulating the practice of the court as hereinafter provided and no misnomer or inaccurate description of any person or place in any such plaint or summons shall vitiate the same so that the person or place be therein described so as to be commonly known.

Notice of special
defences.
22 Vic. No. 18 s. 59.
1 Pring 506.

56. No defendant in any District Court shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff or to set up by way of defence and to claim and have the benefit of infancy coverture or of any statute of limitations or of his discharge under any statute relating to bankrupts or any Act for relief of insolvent debtors or to plead a justification in any action of tort without the consent of the plaintiff unless such notice thereof as shall be directed by the rules made for regulating the practice of the court shall have been given to the registrar of the court and in every case in which the practice of the court shall require such notice to be given the registrar shall as soon as conveniently may be after such notice communicate the same to the plaintiff by the post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for the defendant to prove on the trial that such notice was communicated to the plaintiff by the registrar.

Plea or notice of de-
fence to be filed.
29 Vic. No. 10 s. 20.

Rules.

57. A plea or notice of defence shall be filed in every action in which it is the intention of the defendant to contest the plaintiff's claim or any part thereof and subject to the provisions of section one hundred and twenty-seven of this Act the District Court judges or a majority of them are hereby empowered to make such rules as they shall think fit for classifying the defences which shall require a plea and those which shall require a notice and for regulating the time for filing and service of such pleas and notices the mode of such service and the forms of such pleas and notices respectively and subject as aforesaid it shall be lawful for them from time to time to alter any such rules or forms but the rules hereby authorised to be made shall not take effect until one month after the publication thereof in the *Gazette*.

Payment into court.
22 Vic. No. 18 s. 60.
1 Pring 506.

58. The defendant in any suit in a District Court other than in a suit for libel or slander may within such time as shall be directed by the rules to be made as aforesaid pay into court such sum of money as he shall think

think a full satisfaction for the demand of the plaintiff together with the costs incurred by the plaintiff up to the time of such payment and notice of such payment shall be communicated by the defendant to the plaintiff by post or by causing the same to be delivered at his usual or last known place of abode or business and the sum of money shall be paid to the plaintiff but if he shall elect to proceed and shall recover no further sum in the action than shall have been so paid into court the plaintiff shall pay to the defendant the costs incurred by him in the said action after such payment and an order shall thereupon be made by the court for the payment of such costs by the plaintiff.

31 VICTORIE No. 30.

Defendant deemed a Plaintiff.

59. In every suit under this Act in which the defendant shall be allowed to set off any debt or demand claimed or recoverable by him from the plaintiff such defendant shall whether the plaintiff shall be nonsuit or shall have judgment given against him be entitled to recover in such suit the amount if any by which the debt or demand so set off exceeds the debt or demand claimed and proved by the plaintiff and shall have judgment and execution for the same accordingly Provided that the defendant shall not be allowed to set off any debt or demand exceeding in amount two hundred pounds.

Proceedings where defendant's set-off exceeds the plaintiff's claim.
22 Vic. No. 18 s. 70.
1 Pring 508.
29 Vic. No. 10 s. 11.

Means of obtaining Evidence.

60. Either party to any suit in a District Court may obtain at the office of the registrar of the court subpoenas to witnesses to be served at the option of such party by himself or his agent or by the bailiff of the court with or without a clause requiring the production of books deeds papers and writings in their possession and control and in any such subpoena any number of names may be inserted.

Subpoena to witnesses.
22 Vic. No. 18 s. 67.
1 Pring 507.

61. Every person on whom such subpoena shall have been served either personally or in such other manner as shall be directed by the general rules of the court and to whom at the same time payment or a tender of payment of his expenses shall have been made on such scale of allowance as shall be settled by the general rules of the court and who shall refuse or neglect without sufficient cause to appear or to produce any books papers or writings required by such subpoena to be produced and also every person present in court who shall be required to give evidence and who shall refuse to be sworn and give evidence shall forfeit and pay such fine not exceeding fifty pounds as the judge shall set on him and the whole or any part of such fine in the discretion of the judge after deducting the costs shall be applicable toward indemnifying the party injured by such refusal or neglect and the remainder thereof shall form part of the general fund of the court in which the fine was imposed but no such fine shall exempt such person from any action for disobeying such summons.

Penalty on witnesses neglecting subpoenas
22 Vic. No. 18 s. 68.
1 Pring 507.

62. It shall be lawful for the judge of any District Court at any time after plaint filed on the application of either party supported by affidavit that the evidence of any specified witness including in that term either of the parties is material in the cause and that such witness is absent from the colony or above one hundred miles from the place of trial or is expected to die or to be unable from sickness or infirmity to attend at the hearing or is about to quit the colony or to go to some place beyond the said distance before the cause can be heard to take in court or chambers or to authorise the registrar of any District Court or any commissioner

Examination *de bene esse*.
22 Vic. No. 18 s. 69.
1 Pring 508.

31 VICTORIA No. 30. commissioner of the Supreme Court or justice of the peace or practising barrister or attorney to take at some convenient place the examination of such witness *de bene esse* and all evidence so taken shall be admissible at the hearing subject to all just exceptions unless it be proved that such witness is at the time of the hearing within a convenient distance of the said court and able to attend. Provided that in every such case the opposite party shall have sufficient notice of the time and place appointed for taking such examination and may cross-examine such witness in the usual manner. Provided also that the judge may either direct the whole costs of taking such evidence to be paid by the party applying or make the same costs in the cause.

Affidavits before
whom sworn.
22 Vic. No. 18 s. 101.
1 Pring 514.

63. All affidavits to be used in any District Court shall and may be sworn before any judge of the Supreme Court or any commissioner for taking affidavits in that court or before any judge of any District Court or any justice of the peace.

Hearing and Trial.

If no plea or notice
filed judgment to go
by default.
29 Vic. No. 10 s. 21.

64. On the first day of the sitting of the court for the trial of civil causes the registrar shall call over the list of all actions in which no plea or notice of defence shall have been filed and the judge shall thereupon give judgment for the plaintiff in every action in which the registrar shall not have received notice from the plaintiff that the same has been settled out of court provided the plaint shall disclose sufficient cause of action. Provided also that nothing herein contained shall prevent the presiding judge from letting the defendant in to defend upon such terms as to costs or otherwise as the judge may think reasonable on proof of merits and want of culpable negligence on the part of the defendant. Provided nevertheless that no execution shall issue upon any judgment by default under this Act until the plaintiff shall have filed with the registrar an affidavit of the amount justly and *bonâ fide* due to him upon such judgment together with particulars thereof annexed to the said affidavit.

Proceedings at the
trial where both
parties appear.
22 Vic. No. 18 s. 61.
1 Pring 506.

65. At the time and place in that behalf named in any summons issued out of any District Court the plaintiff shall appear and thereupon the defendant shall be required to appear to answer such plaint and on answer being made in court the judge shall proceed to try the cause and give judgment without any further pleading or formal joinder of issue.

Proceedings where
plaintiff does not
appear.
22 Vic. No. 18 s. 63.
1 Pring 507.

66. If at the time and place so named as aforesaid or at any continuation or adjournment of the court or of the cause for which the summons shall have been issued the plaintiff shall not appear the cause shall be struck out and where the defendant shall appear and shall not admit the demand it shall be lawful for the judge to award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as the judge in his discretion shall think fit and such sum shall be recoverable from the plaintiff in the same way as any debt adjudged by the court to be paid can be recovered. Provided always that if the plaintiff shall not appear when called upon and the defendant or some one duly authorised on his behalf shall appear and admit the cause of action to the full amount claimed and pay the fees payable in the first instance by the plaintiff the court if it shall think fit may proceed to give judgment as if the plaintiff had appeared.

67. If at the time and place so named or at any continuation or adjournment of the court or cause the defendant shall not appear or sufficiently excuse his absence or shall neglect to answer when called in court the judge upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended. Provided always that the judge in any such case at the same or any subsequent court may set aside any judgment so given in the absence of the defendant and the execution thereupon and may grant a new trial of the cause upon such terms if any as to payment of costs giving security for debt or costs or such other terms as he may think fit on sufficient cause shown to him for that purpose.

31 VICTORIA No. 30.
Proceedings where
defendant does not
appear.
22 Vic. No. 18 s. 64.
1 Pring 507.

68. The judge of any District Court may in any case make orders for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit and may also from time to time adjourn the court or the trial or further trial of any cause in such manner and upon such terms as to the judge may seem fit.

Judges may grant
time or adjourn.
22 Vic. No. 18 s. 65.
1 Pring 507.

69. The defendant in any plaint in any District Court may if he think fit whether he be summoned upon such plaint or not in the presence of the registrar of the court in which such plaint shall have been entered or in the presence of an attorney of the Supreme Court or a justice of the peace sign a statement confessing and admitting the amount of the debt or demand or part of the amount of the debt or demand for which such plaint shall have been entered and such registrar shall as soon as conveniently may be after receiving such statement send notice thereof to the plaintiff and thereupon it shall not be necessary for him otherwise to prove the debt or demand so confessed and admitted as aforesaid but the judge of such court at the next sitting of such court whether the parties or either of them attend such court or not shall upon proof by affidavit of the signature of the party if such statement were not made in the presence of the registrar proceed to give judgment for the debt or demand so confessed and admitted in the same manner and subject to the same conditions as if he had tried the cause and given judgment thereupon under the provisions of this Act.

Confession of debts or
parts of debts and
judgments thereupon.
22 Vic. No. 18 s. 96.
1 Pring 512.

Signing Judgment.

70. If the defendant in any such plaint can agree with the plaintiff upon the amount of the debt or demand claimed and on the terms and conditions upon which the same shall be paid or satisfied it shall be lawful for such persons respectively in the presence of the registrar of the court in which such plaint shall have been entered or in the presence of an attorney of the Supreme Court or a justice of the peace to sign a statement of the amount so agreed upon and of the terms and conditions upon which the same shall be paid or satisfied and the registrar shall receive such statement and shall thereupon upon proof by affidavit of the signature of the defendant if such statement were not made in the presence of the registrar enter up judgment for the plaintiff for such amount and upon the terms and conditions agreed upon and such judgments shall to all intents and purposes be the same as if it had been a judgment of the judge of the same court.

Agreement as to the
amount of debt and
conditions of pay-
ment.
22 Vic. No. 18 s. 97.
1 Pring 513.

Evidence.

71. The rules of evidence observed in the Supreme Court shall be applicable to and observed in the trial of all questions of fact in a District Court.

Rules of evidence.
23 Vic. No. 29 s. 43.
3 Pring 359.

72. No

31 VICTORIE No. 30.

Proof to be limited to
matter in the sum-
mons.

22 Vic. No. 18 s. 66.
1 Pring 507.

Actions may be tried
by a jury when parties
require it if the
amount claimed ex-
ceeds twenty pounds.
22 Vic. No. 18 s. 49.
1 Pring 504.

Party requiring jury
to make deposit.
22 Vic. No. 18 s. 50.
1 Pring 504.

Jurors.

22 Vic. No. 18 s. 54.
1 Pring 505.

Jury to be chosen by
ballot.
22 Vic. No. 18 s. 55.
1 Pring 505.

Number of jurors.

22 Vic. No. 18 s. 55.
1 Pring 505.

72. No evidence shall be given by the plaintiff of any demand or cause of action except such as shall be stated in the summons issued in such suit.

Trial by Jury in Civil Causes.

73. In all actions where the amount claimed shall exceed twenty pounds it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action and in every case such jury shall be summoned according to the provisions hereinafter contained. Provided always that the party requiring a jury to be summoned shall give to the registrar of the court or leave at his office such notice thereof as shall be directed by the rules made for regulating the practice of the court as hereinafter provided and the said registrar shall cause notice of such demand of a jury made either by the plaintiff or defendant to be communicated to the other party to the said action either by post or by causing the same to be delivered at his usual place of abode or business but it shall not be necessary for either party to prove on the trial that such a notice was communicated to the other party by the registrar.

74. Every party requiring a jury to be summoned shall at the time of giving the said notice and before he shall be entitled to have such jury summoned pay to the registrar of the court the sum of two pounds and such sum shall be considered costs in the cause unless otherwise ordered by the judge.

75. Whenever a special or civil jury shall be required the judge shall cause not less than eight nor more than twelve of the persons named in the said book to be summoned to attend the court at a time and place to be mentioned in the summons and shall administer or cause to be administered to such of them as shall be empannelled an oath to give true verdicts according to the evidence and every person so summoned shall attend at the court at the time mentioned in the summons and in case of default of attendance or of withdrawal from the court without leave or of refusal to act as a juror shall forfeit such sum of money as the judge shall direct not being more than ten pounds for each default and the delivery of such summons to the person whose attendance is required on such jury or to his wife or servant or any inmate at his usual place of abode or business shall be deemed good service. Provided always that the judge shall have power upon sufficient cause being shown to him to remit a portion or the whole of the sum forfeited as aforesaid.

76. Upon the trial of all cases in such District Courts respectively the juries shall be chosen by ballot from the list of jurors so summoned as aforesaid and in case of a deficiency of jurors the necessary number of persons to compose a jury shall be nominated by the judge from the bystanders and if any person so nominated shall refuse to act as a juror without an excuse allowed by the judge he shall be liable to the same penalty as a juror for not attending after having been summoned.

77. Whenever there are civil issues for trial by jury in any District Court four jurymen shall be empannelled and sworn as occasion shall require to give their verdicts in the causes which shall be brought before them in the court and being once sworn shall not need to be re-sworn on each trial and either of the parties to any such cause shall be entitled to his lawful challenge for cause against any of the said jurors and the said jurors

jurors shall give their verdict or may be discharged as in the said Jury Act 31 VICTORIA No. 30. is provided with respect to juries for the trial of civil issues.

78. Every person summoned or nominated to act as a juror under this Act shall for his attendance be entitled to the same compensation and allowance for his travelling expenses as are provided by law for jurors attending the Supreme Court or any circuit court under a general jury precept.

Payment to jurors.
22 Vic. No. 18 s. 57.
1 Pring 506.

Costs.

79. All the costs of any action or proceeding not herein or otherwise provided for shall be paid by or apportioned between the parties in such manner as the judge shall think fit and in default of any special direction shall abide the event of the action or result of the decision and such costs may be recovered in like manner as any debt adjudged by the court to be paid can be recovered.

Costs.
22 Vic. No. 18 s. 73
1 Pring 508.

80. All costs and charges between party and party shall be taxed by the registrar of the court in which such costs and charges were incurred but this taxation may be reviewed by the judge of the court on the application of either party and no costs or charges shall be allowed on such taxation which are not sanctioned by the scale then in force.

Costs of attorney in certain proceedings in District Courts shall be taxed by registrar as between party and party.
22 Vic. No. 18 s. 75.
1 Pring 508.

81. The fees to be allowed to barristers and attorneys practising in any District Court for appearing or acting on behalf of any person in any suit in such court and the expenses to be paid to witnesses shall be fixed by scale in the rules to be made as hereinafter mentioned. Provided that no such fees to barristers or attorneys shall be allowed in any case where the sum sued for shall not exceed ten pounds.

Fees to barristers and attorneys and expenses to witnesses.
22 Vic. No. 18 s. 74.
1 Pring 508.

Amendments.

82. The judge of a District Court may at all times amend all defects and errors in any civil proceeding in such court whether there is anything in writing to amend by or not and whether the defect or error be that of the party applying to amend or not and all such amendments may be made with or without costs and upon such terms as to the judge may seem fit and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties shall be so made.

As to amendment of defects and errors of proceedings, &c.
22 Vic. No. 18 s. 109.
1 Pring 515.

Judgment and New Trial.

83. Every judgment of any District Court except as herein provided shall be final and conclusive between the parties but the judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given entitling him to the judgment of the court and shall also in every case whatever have the power if he shall think fit to order a new trial to be had upon such terms as he shall think reasonable and in the meantime to stay the proceedings.

Judgments to be final unless new trial granted.
22 Vic. No. 18 s. 71.
1 Pring 508.

84. When judgment has been obtained in any District Court for a sum not exceeding twenty pounds exclusive of costs the judge may order such sum and costs to be paid at such time or times and by such instalments if any as he shall think fit and all such moneys shall be paid into court but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith or within fourteen clear days from the date of the judgment unless the plaintiff or his counsel attorney or agent will consent that the same shall be paid by instalments in which case the judge shall order the same to be paid at such

Where judgment does not exceed twenty pounds judge may order payment by instalments in other cases consent of plaintiff's necessary.
22 Vic. No. 18 s. 76.
1 Pring 509.

31 VICTORIA No. 30. such times and by such instalments as have been consented to and all such moneys whether payable in one sum or by instalments shall be paid into court And in any case in which payment by instalments shall have been ordered execution may be had for the whole amount due upon the judgment if default shall be made in payment of one such instalment.

Cross judgments to be set off.
22 Vic. No. 18 s. 72.
1 Pring 508.

85. If there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

Execution in General.

Registrar to issue warrants of *feri facias*.
22 Vic. No. 18 s. 77.
1 Pring 509.

86. In any case where an order decision judgment or adjudication for the payment of money shall be made by any District Court or the judge thereof it shall and may be lawful for the registrar of the said court on the application of the party in whose favor such order decision judgment or adjudication has been made to issue a warrant in the nature of a writ of *feri facias* which warrant shall be directed to the bailiff or registrar of the said court as the case may be.

Registrars and bailiffs of District Courts may sell property taken in execution without being licensed as auctioneers.
29 Vic. No. 10. s. 22.

87. All registrars and bailiffs of District Courts and their assistants shall without taking out an auctioneer's license have power and authority to sell by public auction all lands tenements hereditaments goods chattels and other property taken in execution by them under process issued from the court of which they respectively are officers.

Execution against Land.

Registrar to take land under writ of execution.
22 Vic. No. 18 s. 78.
1 Pring 509.

88. It shall be lawful for the registrar of every such court by himself or his deputies to be by him appointed and duly authorised under his hand and seal and for whose acts he shall be accountable during his continuance in such office and their employment by him under any warrant in the nature of a writ of execution whereby he is directed to levy any sum of money and whereby he is directed in the behalf herein mentioned to execute the same as herein mentioned (that is to say) to seize and take and to cause to be sold all and singular the lands tenements and hereditaments of or to which the person named in the said writ is or may be seized or entitled or which he can either at law or in equity assign or dispose of.

Registrar to execute bill of sale.
22 Vic. No. 18 s. 79.
1 Pring 509.

89. In case of any sale by the said registrar by himself or his deputy of the right title and interest of any person of to or in any lands or hereditaments the said registrar is hereby required to execute a proper deed of bargain and sale thereof to the purchaser which deed of bargain and sale shall operate and be effectual as a conveyance of the estate right title and interest of such person Provided nevertheless that no such deed of bargain and sale shall so operate and be effectual as aforesaid until the same shall have been duly registered in the proper office for the registration of deeds and be indexed in the index book thereof in the name of the person whose interest in such lands and hereditaments is intended to be thereby conveyed.

Executions not to bind land unless registered.
22 Vic. No. 18 s. 81.
1 Pring 509.

90. No warrant in the nature of a writ of execution under this Act shall bind any lands unless registered in the proper office for registration of deeds with the registrar who shall duly register the same in a book to be kept for that purpose.

Execution

Execution against Personalty.

31 VICTORIA No. 30.

91. It shall be lawful for a bailiff of any of the said courts by himself or his deputies to be by him appointed and duly authorised under his hand and seal to seize and take under any warrant in the nature of a writ of execution whereby he is directed to levy any sum of money and to cause to be sold all and singular the goods chattels and other personal property of or to which the person named in the said warrant is or may be possessed or entitled or which he can either at law or in equity assign or dispose of Provided that the wearing apparel bedding tools and implements of trade of the defendant and his family to the value of ten pounds in the whole shall be protected from seizure.

Bailiff to seize personal property.
22 Vic. No. 18 s. 80.
1 Pring 509.

Execution against the Person.

92. Whenever any sum of money shall have been recovered by the judgment of any District Court and the judgment creditor shall show to the satisfaction of a judge of the Supreme Court or of any District Court that such sum of money has been recovered and that the debt was fraudulently contracted or that the judgment debtor conceals any goods chattels moneys or valuable securities or that he has any income salary or means whereby in the opinion of such judge he can satisfy such judgment or any part thereof or is about to leave the colony or to remove any of his property with intent to evade payment of the said judgment debt such judge may authorise the registrar of the said District Court to issue a warrant in the nature of a writ of *capias ad satisfaciendum* in such form as shall be fixed by the rules to be made under this Act and any bailiff of the District Court and the keeper of any gaol to whom such warrant or any warrant in pursuance thereof is directed shall respectively execute and obey the same respectively and all constables and other peace officers within their several jurisdictions shall aid and assist in the execution thereof and any such warrant may lawfully be executed upon a Sunday in like manner in all respects as the same may be executed on any other day any law statute or usage to the contrary in any wise notwithstanding.

Execution against the person.
22 Vic. No. 18. s. 87.
1 Pring 511.

93. Any person arrested or imprisoned under this Act by virtue of any such warrant as last aforesaid shall be entitled to his discharge on payment of the amount named in such warrant as due for such judgment and the costs of obtaining and executing such warrant and the bailiff making the arrest and the keeper of the gaol to whom the warrant is directed are hereby empowered and required to receive the amount so paid and to transmit the same to the registrar of the District Court in which the judgment was recovered.

13 Vic. No. 12.
1 Pring 40.

Discharge on payment of debt and costs.
22 Vic. No. 18 s. 88.
1 Pring 511.

Giving Possession of Tenements.

94. Any warrant to a bailiff to give possession of a tenement shall justify the bailiff named therein in entering upon the premises named therein with such assistants as he shall deem necessary and in giving possession accordingly but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

Warrants to bailiffs sufficient to justify them for entering on premises.
22 Vic. No. 18 s. 107.
1 Pring 515.

95. Every such warrant shall on whatever day it may be issued bear date on the day next after the last day named by the judge in his order for the delivery of possession of the premises in question and shall continue in force for three months from such date and no longer but no order for delivery of possession need be drawn up or served.

Such warrants to be in force three months from the day next after last day named in judge's order.
22 Vic. No. 18 s. 108.
1 Pring 515.

Foreign

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How execution may
be had out of the
jurisdiction of the
court.

29 Vic. No. 10 s. 23.

Foreign Execution.

96. In all cases where a warrant of execution against the lands tenements hereditaments goods or chattels of any party or for his commitment shall have been issued under this Act and such party or his lands tenements hereditaments goods or chattels shall be out of the jurisdiction of the court issuing such warrant it shall be lawful for the bailiff of the court to send such warrant of execution or of commitment to the registrar of any other District Court within the jurisdiction of which such party or any of his lands tenements hereditaments goods or chattels shall then be or be believed to be with a warrant thereto annexed under the hand of the registrar and seal of the court from which the original warrant issued requiring execution of the same and the registrar of the court to which the same shall be sent shall seal or stamp the same with the seal of the court and shall issue the same to the bailiff of his court and thereupon such last-mentioned bailiff shall be authorised and required to act in all respects as if the original warrant of execution or commitment had been directed to him by the court of which he is the bailiff and shall within such time as shall be specified in the rules of practice return to the bailiff of the court from which the same originally issued what he shall have done in the execution of such process and in case a levy shall have been made shall within such time as shall be specified in the rules of practice pay over all moneys received in pursuance of the warrant to the bailiff of the court from which the same shall have originally issued retaining the fees for execution of the process and where any warrant of commitment shall have been issued and the person apprehended he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the gaol or prison nearest to where he has been arrested and kept therein for the time mentioned in the warrant of commitment unless sooner discharged under the provisions of this Act and all constables and other peace officers shall be aiding and assisting within their respective districts in the execution of such warrant.

Priority of Claims in Execution.

Priority of executions
issuing out of District
Court.

22 Vic. No. 18 s. 83.

1 Pring 509.

97. The precise time when any application shall be made to a registrar to issue a warrant in the nature of a writ of execution against the lands or goods of a party shall be entered by him in the execution book and on such warrant and when more than one such warrant shall be delivered to any registrar or bailiff to be executed he shall execute them in the order of the times so entered.

Priority of execution
issuing out of
Supreme Court and
District Court.

22 Vic. No. 18 s. 84.

1 Pring 510.

98. When a writ against the lands or goods of a party to any suit has issued out of the Supreme Court and a warrant in the nature of a writ of execution against the lands or goods of the same party has issued out of any District Court the right to the property seized shall be determined by the priority of the time of the delivery of the writ so issued out of the Supreme Court as aforesaid to the sheriff to be executed or of the application to the registrar for the issue from such District Court of the warrant in the nature of a writ of execution and the sheriff shall on demand inform the registrar of the precise time of such delivery of the writ so issued out of the Supreme Court as aforesaid and the registrar on demand shall inform the sheriff or any sheriff's officer of the precise time of the application to such registrar for the issue from such District Court of the warrant in the nature of a writ of execution And any warrant granted in pursuance of

any

any writ or warrant of execution issued out of the Supreme Court or any District Court and the indorsement thereon. And any warrant issued by the registrar of any District Court authorising the bailiff of such District Court to give possession of premises as hereinbefore mentioned shall respectively be sufficient justification to any registrar bailiff or sheriff's officer acting thereon.

99. The landlord of any tenement in which any such goods shall be so taken may claim the rent thereof at any time within five clear days from the date of such taking or before the removal of the goods by delivering to the bailiff or officer making the levy any writing signed by himself or his agent which shall state the amount of rent claimed to be in arrear and the time for and in respect of which such rent is due and if such claim be made the bailiff or officer making the levy shall in addition thereto distrain for the rent so claimed and the cost of such distress and shall not within five days next after such distress sell any part of the goods taken unless they be of a perishable nature or upon the request in writing of the party whose goods shall have been taken and the bailiff shall afterwards sell such of the goods under the execution and distress as shall satisfy first the costs of and incident to the sale next the claim of such landlord not exceeding the rent of four weeks when the tenement is let by the week the rent of two terms of payment when the tenement is let for any other term less than a year and the rent of six months in any other case and lastly the amount for which the warrant issued and if any replevin be made of the goods so taken the bailiff shall notwithstanding sell such portion thereof as will satisfy the costs of and incident to the sale under the execution and the amount for which the warrant issued and in either event the overplus of the sale if any and the residue of the goods shall be returned to the defendant and the poundage of the bailiff and broker for appraisement and sale under such distress shall be the same as would have been payable if the distress had been an execution of the District Court and no other fees shall be demanded or taken in respect thereof.

When goods seized under process of District Courts landlord may claim certain rent in arrear.
22 Vic. No. 18 s. 85.
1 Pring 510.

Interpleader.

100. If any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any District Court or in respect of the proceeds or value thereof by any person not being the party against whom such process has issued it shall be lawful for the registrar of such court upon application of the officer charged with the execution of such process as well before as after any action brought against such officer to enter an interpleader plaint and to issue a summons thereon calling before the said court as well the party issuing such process as the party making such claim and thereupon any action which shall have been brought in the Supreme Court or in any District Court in respect of such claim shall be stayed and the court in which such action shall have been brought or any judge thereof on proof of the issue of such summons and that the goods and chattels were so taken in execution may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the District Court and the judge of the District Court shall (conformably as far as may be with the *Interdict Act of 1867*) adjudicate upon such claim and make such

Interpleader.
22 Vic. No. 18 s. 86.

31 VICTORIA No. 30. such order between the parties in respect thereof and of the costs of the proceedings as to him shall seem fit and such order shall be deemed a judgment of the court and be enforced in like manner as a judgment in any other suit brought in such court.

Arbitration.

Power to refer to arbitration by consent.
22 Vic. No. 18 s. 105.
1 Pring 514.

101. The judge of any District Court may in any case with the consent of both parties to the suit order the same with or without other matters within the jurisdiction of the court in dispute between such parties to be referred to arbitration to such person or persons and in such manner and on such terms as he shall think reasonable and just and such reference shall not be revocable by either party except by consent of the judge and the arbitrator or arbitrators or umpire shall hear and determine the case and the award given by him or them shall be entered as the judgment in the cause and shall be as binding and effectual to all intents as if given by the judge. Provided that the judge may if he think fit on application to him at the first court held after the expiration of one week after the entry of such award set aside any such award so given as aforesaid or may refer such award back to the arbitrator arbitrators or umpire or may with the consent of both parties aforesaid revoke the reference or order another reference to be made in the manner aforesaid.

Certiorari Costs.

Removal of causes.
22 Vic. No. 18 s. 99.
1 Pring 513.

102. No judgment order or determination given or made by any judge of a District Court nor any cause or matter brought before him or pending in his court shall be removed by appeal motion writ of error *certiorari* or otherwise into any other court whatever save and except in the manner and according to the provisions herein mentioned.

Removal of causes.
22 Vic. No. 18 s. 89.
1 Pring 511.

103. Any plaint entered in any District Court may be removed by *certiorari* into the Supreme Court by order of any judge thereof upon such terms as to payment of costs giving security for the amount claimed or costs or such other terms as such judge shall think fit. Provided it shall appear to such judge to be a case proper to be tried in the Supreme Court. Provided also that no plaint shall be removed when the amount claimed does not exceed ten pounds unless the defendant give security to the satisfaction of such judge for the amount claimed and also for the costs in the Supreme Court not exceeding one hundred pounds or deposit in the hands of the prothonotary of the said court the amount claimed together with the sum of one hundred pounds by way of security for the said costs.

Rule or summons to show cause why a writ of *certiorari* or prohibition should not issue to be a stay of proceedings.
22 Vic. No. 18 s. 90.
1 Pring 511.

104. The granting by the Supreme Court or by any judge thereof of a rule or summons to show cause why a writ of *certiorari* or prohibition should not issue to a District Court shall if the Supreme Court or a judge thereof so direct operate as a stay of proceedings in the cause to which the same shall relate until the determination of such rule or summons or until the Supreme Court or judge shall otherwise order and the judge of the District Court shall from time to time adjourn the hearing of such cause to such day as he shall think fit until such determination or until such order be made but if a copy of such rule or summons shall not be served by the party who obtained it on the opposite party and on the registrar

registrar of the District Court within a reasonable time not being less than 31 VICTORIA No. 30.
two clear days before the day fixed for hearing of the cause the judge of
the District Court may in his discretion order the party who obtained the
rule or summons to pay all the costs of the day or so much thereof as he
shall think fit unless the Supreme Court or a judge thereof shall have
made some order respecting such costs.

105. When a writ of *certiorari* or of prohibition addressed to a judge of a District Court shall have been granted by the Supreme Court or a judge thereof on an *ex parte* application and the party who obtained it shall not lodge it with the registrar and give notice to the opposite party that it has issued within a reasonable time not being less than two clear days before the day fixed for hearing the cause to which it shall relate the judge of the District Court may in his discretion order the party who obtained the writ to pay all the costs of the day or so much thereof as he shall think fit unless the Supreme Court or a judge thereof shall have made some order respecting such costs.

Notice of writ of *certiorari* or prohibition having been obtained to be sent to registrar.
22 Vic. No. 18 s. 91.
1 Pring 512.

106. Whenever an order is granted for the removal of a plaintiff from a District Court or for the issuing of a *certiorari* for such removal and no provision is made with respect to the costs of the proceedings in the District Court the costs of such proceedings shall be costs in the cause.

Costs in the District Court.
22 Vic. No. 18 s. 92.
1 Pring 512.

Mittimus and Mandamus.

107. Where in any action brought in the Supreme Court the claim indorsed on the writ does not exceed two hundred pounds or where such claim though it originally exceeded two hundred pounds is reduced by payment into court or an admitted set-off or otherwise to a sum not exceeding two hundred pounds a judge of the Supreme Court on the application of either party after issue joined or after any interlocutory judgment may if he shall think the case proper to be tried in a District Court on such terms as he shall think fit order that the cause be tried in any District Court which he shall name and thereupon the plaintiff shall lodge with the registrar of such court such order and the issue or the writ for the assessment of damages and the judge of such court shall appoint a day for the hearing of the cause notice whereof shall be sent by the registrar to both parties or their attorneys in such manner as shall be directed by the rules of practice and after such hearing the registrar shall certify the result to the prothonotary of the Supreme Court and judgment in accordance with such certificate may be signed in the Supreme Court.

In certain cases judge of Supreme Court may order cause to be tried in District Court.
22 Vic. No. 18 s. 98.
1 Pring 513.
29 Vic. No. 10 s. 12.

108. No writ of *mandamus* shall henceforth issue to a judge or an officer of the District Court for refusing to do any act relating to the duties of his office but any party requiring such act to be done may apply to the Supreme Court or a judge thereof upon an affidavit of the facts for a rule or summons calling upon such judge or officer of a District Court and also the party to be affected by such act to show cause why such act should not be done and if after the service of such rule or summons good cause shall not be shown the Supreme Court or a judge thereof may by rule or order direct the act to be done and the judge or officer of the District Court upon being served with such rule or order shall obey the same on pain of attachment

Rule or order substituted for writ of *mandamus* to a judge or officer of a District Court.
22 Vic. No. 18 s. 93.
1 Pring 512.

31 VICTORIA No. 30. attachment and in any event the Supreme Court or judge thereof may make such order with respect to costs as to such court or judge shall seem fit.

Appeal.

Appeal to the Su-
preme Court.
22 Vic. No. 18 s. 94.
1 Pring 512.

109. If either party to any cause in any District Court in which the amount claimed exceeds thirty pounds shall be dissatisfied with the determination or direction of the said court in point of law or upon the admission or rejection of any evidence such party may appeal from the same to the Supreme Court. Provided such party shall within such time and in such manner as shall be prescribed by the rules to be made under this Act give notice of such appeal to the other party or his attorney and also give security (to be approved of by the registrar of the said District Court) for costs of the appeal and the amount of the judgment or in lieu of giving such security deposit in the hands of such registrar the amount of the judgment together with thirty pounds in addition to such amount to answer the costs of the appeal if such appeal be dismissed and the Supreme Court may either order a new trial on such terms as it thinks fit or may order judgment to be entered for either party as the case may be and make such order with respect to the costs of the said appeal as such court may think proper and such orders shall be final and such appeal shall be in the form of a case agreed on by both parties or their attorneys and if they cannot agree the judge of the District Court upon being applied to by them or their attorneys shall settle the case and sign it and such case shall be transmitted by the appellant to the prothonotary and be set down for argument in the Supreme Court in the same manner as special cases in actions in that court.

Parties may agree
not to appeal.
22 Vic. No. 18 s. 95.
1 Pring 512.

110. No appeal shall lie from the decision of a District Court if before such decision is pronounced both parties shall agree in writing signed by themselves or their attorneys or agents that the decision of the judge shall be final.

Fees and Fines.

Amount of court fees.
22 Vic. No. 18 s. 42.
1 Pring 503.

111. There shall be payable on every civil proceeding in the District Courts the fees mentioned in the schedule to this section and none other except as herein provided and the fractional part of a pound shall for the purpose of poundage be reckoned as an entire pound and a table of such fees shall be put up in some conspicuous place in the courthouse and in the registrar's office and the fees on every such proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be taken on or before such proceeding and the fees upon execution shall be paid into court before or at the time of the issue of the process of execution. And it shall be lawful for the Governor in Council from time to time to alter such scale of fees in any particular. Provided that no such alteration in the scale of fees shall come into operation until the expiration of one month after the same shall have been notified to both Houses of the Parliament of the colony and that no such alteration shall take effect if within such period either House of Parliament shall by an address to the Governor signify its dissent therefrom.

SCHEDULE

SCHEDULE.

31 VICTORIA No. 30.

Court Fees.

	In cases not exceeding £5.	In cases not exceeding £10.	In cases not exceeding £30.	In all other cases.	
	s. d.	s. d.	s. d.	s. d.	
For filing every plaint issuing summons and other proceedings to judgment	2 6	5 0	7 6	20 0	22 Vic. No. 18. Schedule 1 Pring 516.
For issuing every subpoena	0 6	0 6	1 0	1 0	
For service of every summons or subpoena if within two miles from the courthouse	0 6	0 6	0 6	0 6	
For such service every mile (one way) beyond two miles	0 6	0 6	0 6	0 6	39 Vic. No. 5 s. 2.
For issuing every warrant of execution	2 0	2 6	5 0	5 0	

Special Fees.

For filing every plea	1 0
For every search	0 6
For every copy	0 6
For swearing and filing every special affidavit	2 0
For taxing every bill of costs	2 6
For every summons to show cause in interlocutory matter	1 0
For every interlocutory order	1 0
For every warrant of attachment	2 6

Bailiff's Fees.

For keeping possession under an execution against the goods each day	6 0
For making levy where the sum levied for shall not exceed twenty pounds	5 0
For making levy where the sum levied for shall exceed twenty pounds the like sum for the first twenty pounds and for every pound over that sum	0 3
For executing every warrant against the person	5 0
For executing every warrant of <i>habere</i> in ejectment	5 0
For mileage in the execution of any warrant where the same shall be executed not more than two miles from the courthouse	1 0
For such mileage where the warrant shall be executed beyond such distance of two miles for every such mile beyond	0 6

112. All fees payable on any proceedings in the District Courts to the registrars of the several courts except such part thereof as the bailiffs of those courts respectively shall from time to time be entitled to receive and retain for their own use and all fines imposed under this Act and received by such registrar shall be deemed and taken to be part of the consolidated revenues of the colony and shall be accounted for paid and applied accordingly And mileage fees shall be paid by the registrar to the bailiff of the court unless otherwise ordered by the judge.

Fines and fees part
of the consolidated
revenue.
22 Vic. No. 18 s. 43.
1 Pring 503.

30 Vic. No. 5 s. 2.

Jurisdiction in Appeal.

113. Wherever in any Act in force in the colony of Queensland provision is made for an appeal to a court of general or quarter sessions or to a judge of the Supreme Court on circuit or where an appeal is given from any judgment decision or act of a justice of the peace and no other court of appeal is given such appeal shall lie to the District Court within whose jurisdiction the decision appealed from was given and shall be heard and determined by the judge of such District Court Provided nevertheless that the judge may state in the form of a special case for the opinion of the Supreme Court any question or questions of law arising upon the facts of the case and his judgment shall be affirmed amended altered or reversed as the said Supreme Court upon the hearing of such special case shall direct.

Appeal.
29 Vic. No. 10 s. 10.

Desertion

31 VICTORIA No. 30.

Desertion of Wife.

Powers under
Deserted Wives and
Children's Act
Amendment Act.
22 Vic. No. 18 s. 31.
1 Pring 501.

114. The jurisdiction and powers which by the Act twenty-two Victoria number six are vested in and conferred on the Supreme Court and the judges thereof severally for protecting in certain cases the property of married women deserted by their husbands may be equally exercised by every district court and the judge or deputy judge thereof and every order made in that behalf shall while in force have the same validity and effect as a similar order made under the same Act by the Supreme Court.

Judges of District
Courts may grant
orders of protection
to married women
deserted by their
husbands.
29 Vic. No. 10 s. 19.

115. Every judge of a District Court shall have and may exercise the powers given to and conferred upon police magistrates by the eleventh section of the *Matrimonial Causes Jurisdiction Act of 1864* and every order of protection made under the said section by a judge of a District Court shall within ten days after the making thereof be entered with the clerk of petty sessions of the police district within the jurisdiction of which the wife is resident and shall have the same effect in all respects and shall be liable to be discharged in the same manner as an order made under the said section by a police magistrate.

Criminal Jurisdiction.

Governor may declare
that District Courts
shall have criminal
jurisdiction.
29 Vic. No. 10 s. 5.

116. It shall be lawful for the Governor in Council from time to time by proclamation in the *Gazette* to declare that any District Court shall be a court possessing criminal jurisdiction and by the same or any subsequent proclamation to declare at what place or places the said jurisdiction shall be exercised and any District Court named in any such proclamation shall after three calendar months from the publication thereof in the *Gazette* possess jurisdiction in respect of all crimes misdemeanors and offences save as hereinafter excepted anything in any law or statute to the contrary notwithstanding and the judge of such court shall be the sole judge at the trial of all criminal issues in such court and in all matters relating to any information filed therein for any crime misdemeanor or offence.

Exceptions from
criminal jurisdiction.
29 Vic. No. 10 s. 6.

117. No District Court shall try any person or persons for any treason murder or capital felony or for any felony which when committed by a person not previously convicted of felony is punishable by penal servitude for life under the Offences Against the Person Act or for any of the following offences (that is to say)—

- (1.) Misprision of treason
- (2.) Offences against the Queen's title prerogative person or government or against either House of Parliament
- (3.) Offences subject to the penalties of præmunire
- (4.) Blasphemy and offences against religion
- (5.) Perjury and subornation of perjury
- (6.) Making or suborning any other person to make a false oath affirmation or declaration punishable as perjury or as a misdemeanor.
- (7.) Offences against any provision of the laws relating to bankrupts and insolvents
- (8.) Composing printing or publishing blasphemous seditious or defamatory libels
- (9.) Bribery
- (10.) Arson
- (11.) Unlawful

- (11.) Unlawful combinations and conspiracies except conspi- 31 VICTORIA No. 30.
racies or combinations to commit any offence which such
courts have jurisdiction to try when committed by one
person
- (12.) Stealing or fraudulently taking or injuring or destroying
records or documents belonging to any court of law or
equity or relating to any proceeding therein
- (13.) Stealing or fraudulently destroying or concealing wills or
testamentary papers or any document or written instrument
being or containing evidence of the title to any real estate
or any interest in lands tenements or hereditaments.

Or for any offence committed by trustees agents bankers or factors and
mentioned in any section between the eightieth and ninety-first sections
(both inclusive) of the *Larceny Act of 1865*.

118. It shall be lawful for the Governor in Council by proclamation Governor may with-
in the *Gazette* to withdraw from any district court either absolutely or draw criminal juris-
for any time to be limited by such proclamation the criminal jurisdiction diction.
possessed by such court and after three calendar months from the publica- 29 Vic. No. 10 s. 7.
tion of any such proclamation in the *Gazette* the criminal jurisdiction of any
District Court named in such proclamation shall cease and be determined.

119. All crimes misdemeanors and offences prosecuted in any District Criminal jury.
Court shall be tried by a jury consisting of twelve men to be chosen 29 Vic. No. 10 s. 8.
returned summoned and sworn as by law for the time being provided for
the choosing returning summoning and swearing of common jurors for the
trial of criminal issues in the Supreme Court and every such jury shall be
subject to the same laws rules regulations and manner of proceeding as are
observed upon any criminal trial in the said Supreme Court.

120. All crimes misdemeanors and offences cognizable in any Proceeding by infor-
District Court may be tried in such court by information in the name of mation.
Her Majesty's Attorney-General or Solicitor-General for the colony of 29 Vic. No. 10 s. 9.
Queensland or of such other person as the Governor of the said colony may
appoint who shall respectively perform the duties of a grand jury until
other provisions shall be made in that behalf by Act of the Legislature
and all issues of law joined on any such information shall be determined by
the judge of the District Court (and in error by the Supreme Court) and all
issues of fact joined on any such information shall be tried before the judge
of such District Court and a jury of twelve men as hereinbefore provided.

121. The judges of the District Courts shall have power to issue Power of judges to
precepts for the summoning of general jurors for the trial of criminal issues issue jury precepts.
in the District Courts in like manner as the judges of the Supreme Court 30 Vic. No. 13 s. 1.
have power to issue precepts for summoning jurors to try criminal issues *Jury Act* sec s. 15.

Misconduct of Officers.

122. In case any bailiff of the said courts who shall be employed to Bailiffs made answer-
levy any execution against any lands tenements goods chattels or property able for escape and
shall by neglect or connivance or omission lose the opportunity of levying any neglect to levy exe-
such execution then upon complaint of the party aggrieved by reason of cution.
such neglect connivance or omission and the fact alleged being proved to 29 Vic. No. 10 s. 26.
the satisfaction of the court on the oath of any credible witness the judge
shall order such bailiff to pay such damages as it shall appear that the
plaintiff has sustained thereby not exceeding in any case the sum of
money

31 VICTORIA No. 30. money for which the said execution issued and the bailiff shall be liable thereto and upon demand made thereof and on his refusal to pay and satisfy the same payment thereof shall be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Remedies against and penalties on bailiffs and other officers for misconduct.
29 Vic. No. 10 s. 27.

123. If any registrar bailiff or officer of any of the said courts acting under color or pretence of the process of the said court shall be charged with extortion or misconduct or with not duly paying or accounting for any money levied by him under the authority of the District Courts Act or Acts for the time being it shall be lawful for the judge to inquire into such matter in a summary way and for that purpose to summon and enforce the attendance of all necessary parties in like manner as the attendance of witnesses in any case may be enforced and to make such order thereupon for the repayment of any money extorted or for the due payment of any money so levied as aforesaid and for the payment of such damages and costs as he shall think just and also if he shall think fit to impose such fine upon the registrar bailiff or officer not exceeding ten pounds for each offence as he shall deem adequate and in default of payment of any money so ordered to be paid payment of the same may be enforced by such ways and means as are herein provided for enforcing a judgment recovered in the said court.

Protection to Officers.

Indemnity to persons acting under this Act.
22 Vic. No. 18
s. 111. 1 Pring 515.

124. If any action shall be brought against any person for anything done in pursuance of this Act such person may plead the general issue and give the special matter in evidence and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said District Court previous to the issuing of such warrant and in case the plaintiff in such action shall have a verdict pass against him he nonsuit or discontinue the action the defendant shall in any of the said cases be allowed full costs as between attorney and client.

Limitation of actions for proceedings in execution of this Act.
29 Vic. No. 10 s. 28.

125. And for the protection of persons acting in the execution of this Act be it enacted That all actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within six calendar months after the act committed and not afterwards or otherwise and notice in writing of such action and the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought or if after action brought a sufficient sum of money shall have been paid into court with costs by or on behalf of the defendant.

Provision for the protection of officers of the court.
29 Vic. No. 10 s. 29.

126. If any person shall bring any suit in the Supreme Court in respect of any grievance committed by any registrar bailiff or officer of any court holden under the District Court Act or Acts for the time being under color or pretence of the process of the said court and the jury upon the trial of the action shall not find greater damages for the plaintiff than the sum of twenty pounds no costs shall be awarded to the plaintiff in such action unless the judge shall certify in court that the action was fit to be brought in the Supreme Court.

District

District Court Rules.

127. The District Court judges for the time being or a majority of them shall have power to make such general rules as they shall think fit for regulating the practice and proceedings of the District Courts the fees to be allowed to barristers and attorneys and the expenses to be paid to witnesses and also to frame forms for every matter or proceeding in the said courts for which they shall think it necessary that a form be provided and also for keeping all books entries and accounts to be kept by the registrars of the said courts and from time to time to alter any such rule or form and the rules so made shall not take effect until one month after the publication thereof in the *Gazette* and in any case not expressly provided for herein or by the said rules the general rules of practice in the Supreme Court may be adopted and applied by the judges of the District Courts to actions and proceedings in their several courts Provided that all rules so made shall before such publication thereof be approved by the judges of the Supreme Court or any two of them of whom the Chief Justice shall be one Provided also that all rules heretofore made for District Courts whereby it may be ordered that a defence arising out of the statute of frauds or any statute to be hereafter made to the like effect is to be pleaded specially or notified are hereby annulled and all such rules which may be hereafter made to the like effect shall be null and void.

31 VICTORIA No. 30.

Power to make rules of practice.

22 Vic. No. 10 s. 4.

27 Vic. No. 14 s. 20.

3 Pring 316.

Rules to plead statute of fraud specially annulled.

30 Vic. No. 14 s. 25.

Commencement and Short Title.

128. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as "*The District Courts Act of 1867.*"

Commencement of Act.

Short title.

22 Vic. No. 18.

31 VICTORIA No. 29. **An Act to Consolidate and Amend the Laws relating to Small Debts Courts.**

[28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to small debts courts Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

Interpretation.

10 Vic. No. 10 s. 46.
2 Pring 1216.

1. Throughout this Act unless there be something in the context in either case repugnant to that construction the term "court of petty sessions" (or the word "court" indicating a court of petty sessions) shall be taken and is intended to mean any two or more justices of the peace or (in cases where one is under this Act authorised to adjudicate) any one justice of the peace sitting for the purposes of this Act at the usual place of meeting of justices in petty sessions and in this or any Act the term "Small Debts Court" shall be taken to mean any court held under this Act unless the contrary appear.

Small Debts Courts.

Courts of petty

sessions to be small
debts courts.
10 Vic. No. 10 s. 4.
2 Pring 1238.

2. All courts of petty sessions now established or that may hereafter be established shall within their respective districts have power and authority to hear and determine in a summary way all actions whatsoever (against persons liable as hereinafter mentioned to be summoned to such court and every defendant sued jointly with such person) for the recovery of any debt demand or damage whether liquidated or unliquidated to an amount in any case not exceeding thirty pounds or (where the party intended to be sued shall by writing under his hand have consented thereto) to an amount not exceeding fifty pounds Provided that such courts shall not have jurisdiction in any case where the matter in question relates to the taking of any duty to Her Majesty or any fee of office or to any annual rent or other matter in which rights in future may be bound or to any general right or duty nor where the debt sought to be recovered is for any money or thing won at or by means of any race match wager raffle or any kind of play or game nor in any case where the debt or claim shall have arisen more than three years before the issuing of the summons unless there hath been in writing an acknowledgment of or promise to pay the same within that period Provided also that in every case of trespass to land if the title to the freehold therein shall *bonâ fide* be in dispute between the parties the court of petty sessions shall have no power to adjudicate therein Provided also that the said courts shall in addition to the powers hereinbefore conferred have authority to hear and determine all disputes and differences between partners not exceeding the sum of twenty pounds.

And to hear and
determine causes to
the amount of £30
or by consent of £50.
30 Vic. No. 17 s. 1.

Exceptions to the
jurisdiction of such
courts.

Freehold &c.

Partnership juris-
diction.

3. The

3. The said courts of petty sessions shall be courts of record and the judgments of any of the said courts may be set up as a defence in any action brought either in any of the said courts or in any inferior court or in the Supreme Court. Provided that the entry of the judgment on the cause list of the court of petty sessions shall be deemed and held to be a record of such judgment and that the same or a certified copy thereof under the hand of the clerk of such petty sessions shall (on proof of such signature and of the identity of the claim and parties) be received as evidence of such judgment. Provided also that in respect of any action for trespass to land tried in any court of petty sessions where the right to the possession shall be shown to have been in dispute and any action for rent not being between the original parties to the letting where the right to receive or the liability to pay such rent shall have been in dispute and any action for contribution to the erection or repair of any dividing fence where the defendant's liability to contribute shall have been in dispute the judgment of the court of petty sessions as to such right or liability shall be conclusive only as to the particular act or acts of trespass or amount of rent or contribution then in question and shall not be taken to have determined any of those questions generally between the parties.

31 VICTORIA No. 29.
Courts of petty sessions to be courts of record.
10 Vic. No. 10 s. 11.
2 Pring 1239.

The Justices.

4. All causes of action heard and determined under this Act shall be so heard and determined by two or more justices of the peace except as hereinafter provided.

Causes to be heard by two or more justices.
30 Vic. No. 17. s. 3
and 10 Vic. No. 10 s. 5.
2 Pring 1238.

5. Provided that it shall be lawful for all police magistrates sitting at any court of petty sessions to hear and determine all causes of action which otherwise by this Act require to be heard and determined by two or more justices of the peace.

Police magistrates may adjudicate.
30 Vic. No. 17 s. 3.

6. Provided also that in every case in which the plaintiff shall seek to recover no more than the sum of five pounds or in case the sum in dispute exceeds the sum of five pounds and does not exceed thirty pounds but both parties consent thereto (which consent shall be specially entered into the record book at the commencement of the hearing) it shall be lawful for one justice of the peace sitting at the usual place and time of meeting of any court of petty sessions to hear and determine such cases which shall thereupon be proceeded with in every respect as if the same were heard and determined by two or more justices and in every case the decision of such justice or justices shall be final and conclusive.

One magistrate to have jurisdiction in certain cases.
10 Vic. No. 10. s. 5.
2 Pring 1238.

Officers.

7. The clerk of the bench or other clerk of the said courts of petty sessions as may from time to time be directed by such courts respectively shall discharge the duties of registrar of the said courts and shall in addition to any other authorised emoluments receive to his own use the fees mentioned in the schedule hereunto annexed marked A as payable on the entry of every plaint and the said courts of petty sessions shall from time to time appoint a bailiff or bailiffs for the service and execution of the processes orders and judgments authorised by this Act which bailiff or bailiffs shall receive to their own use the fees mentioned in the schedule hereunto annexed marked A as payable to such bailiff or bailiffs.

Officers of such courts.
10 Vic. No. 10 s. 6.
2 Pring 1238.

31 VICTORIA No. 29.

SCHEDULE A.

Fees to be Paid to the Several Officers Undermentioned on the Several Occasions set against the Same.

		s.	d.
10 Vic. No. 10 schedule A.	To the registrar on entering every plaint and cause for trial	1	0
2 Pring 1246.	To the registrar for drawing plaint and particulars if requested by plaintiff	1	0
	To the registrar for copy of summons to be served on defendant	1	0
	To the registrar for every inspection of the record... ..	0	6
	To the registrar for drawing and issuing every writ of execution or attachment	1	0
	To the registrar for every subpoena	0	6
	To the registrar for filling every defence or plea	1	0
	To the registrar for drawing same if requested by defendant	1	0
	To the bailiff for serving summons or subpoena at request of plaintiff or defendant and making affidavit of service if service be made	2	0
	To the bailiff for every levy or caption	1	0
	To the bailiff for every mile or fraction of a mile over two miles from the court which he may have to travel to serve summons or to execute other process of the court but not counting the return journey	0	6
	To the bailiff for possession money by the day	3	6

Fees to be taken.
10 Vic. No. 10. s. 40.
2 Pring 1245.

8. The several fees and sums of money expressed in the said last-mentioned schedule and no other shall be taken by the several officers of the said courts therein mentioned for their respective services in the execution of this Act.

Counsel and Attorney.

Successful party to be entitled to his costs of suit.
30 Vic. No. 17 s. 5.

9. In all cases in which counsel or attorney or both shall be employed in which the plaintiff shall obtain a verdict in the said courts of petty sessions he shall in addition to the amount so recovered be entitled to his costs of suit as set forth in the schedule B hereto annexed And in all cases in which a defendant shall obtain a verdict or plaintiff shall have been non-suited he shall be entitled to recover from the plaintiff his costs of suit as set forth in the said schedule unless the court shall certify that the party obtaining a verdict should not be entitled to costs.

SCHEDULE B.

Attorney's Costs.

	£	s.	d.
30 Vic. No. 17 schedules A and B.	Plaintiff's attorney attending hearing where the sum amounts to five pounds and does not exceed ten pounds	1	1 0
	Like where the sum exceeds ten pounds	2	2 0
	Or where counsel engaged	1	1 0
	Drawing instructions for counsel when engaged	0	10 6
	Defendant's attorney attending hearing when the sum sued for is under the sum of five pounds	0	10 6
	Like where the sum sued for amounts to five pounds and does not exceed ten pounds	1	1 0
	Like when the sum sued for exceeds ten pounds	2	2 0
	Drawing instruction for counsel when engaged... ..	0	10 6

Counsel's Fees

Plaintiff's counsel where the judgment amounts to ten pounds or upwards	2	2	0
Defendant's counsel when the sum sued for amounts to ten pounds or upwards	2	2	0

Witnesses' Expenses.

Witnesses' expenses including the attendance of plaintiff and defendant per diem	0	5	0
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Where parties have attended from a distance one shilling per mile to be allowed for one way only.

Jurisdiction.

Jurisdiction.

31 VICTORIE No. 29.

10. In all causes of action cognizable by the said courts of petty sessions it shall be lawful for the parties suing in said courts to bring their action for any sum not exceeding thirty pounds notwithstanding the original cause of action exceeded that amount Provided always that in all such cases the verdict of the court shall be in full between the parties on foot of that cause of action and the plaintiff shall be debarred from suing in any court for the overplus of his original demand.

Actions may be brought for £30 though original debt above that amount on relinquishing balance.
30 Vic. No. 17 s. 4.

11. In case the defendant in any action shall appear to have given bills of exchange or promissory notes for the payment of any debt originally above the amount of jurisdiction created by this Act but which bills or notes are separately security for a sum not exceeding ten pounds each bill or note shall be regarded as forming a distinct and separate contract and may be sued upon and recovered in the same way as any other debt recoverable under this Act.

Notes or bills for sums not exceeding ten pounds.
10 Vic. No. 10 s. 10.
2 Pring 1239.

12. Every action which shall be brought in any court of petty sessions shall be brought in the court which shall be holden in and for the district where the defendant in such action shall usually reside or in the court which shall be holden in and for the district in which the debt was contracted or the cause of action shall have arisen unless there be two or more joint defendants in which case the plaintiff may proceed as is hereinafter directed Provided always that in case the defendant in any action shall have given an engagement or promise in writing to pay any debt or sum in a particular place specified the plaintiff may cause such defendant to be summoned to attend the court which shall be holden in and for the district within which the place so specified is situated Provided also that if any party after having in one district contracted a debt or become liable for any damage recoverable in the courts of petty sessions shall become resident in another district previously to the issuing of a summons for the recovery of such debt or damage it shall be lawful for the plaintiff to summon the defendant to the court of petty sessions holden for the district in which such debt was contracted or liability for damage incurred originally in the same manner as if he had continued a resident of such district.

Actions to be brought in court of petty sessions for the district where the defendant resides or the cause of action accrued.
10 Vic. No. 10 s. 23.
2 Pring 1241.
30 Vic. No. 17 s. 2.

or was payable.

or where defendant has changed his residence.

13. Where in case of persons jointly liable all the persons so liable shall not reside within the jurisdiction of the same court of petty sessions it shall be lawful for the plaintiff to bring his action before any court of petty sessions within the jurisdiction of which any of the persons jointly liable shall reside by serving any of such persons with a summons in the manner hereinafter directed and such person may serve the other persons so jointly liable with a notice of such summons in order that they may appear and join in defending such action and in case such other persons shall not so appear and join the action may proceed and judgment be obtained and execution issued against the person who shall have been served with the plaintiff's summons notwithstanding the others jointly liable may not have been served with any summons or joined in such action and no plea in abatement shall be allowed for or advantage be taken of the non-joinder of the person or persons so jointly liable Provided always that

Proceeding in case of joint defendants residing in different districts.
10 Vic. No. 10 s. 24.
2 Pring 1241.

No plea in abatement in certain cases.

31 VICTORIA No. 29. that the person against whom execution may have been issued shall retain any right which he may have to demand contribution from the other persons jointly liable with him and in case he shall have caused such other persons to be personally served with a copy of the plaintiff's summons upon him in such action three days before the day appointed for appearing and answering to the same the judgment or a copy thereof certified by the registrar recovered against him in such action shall be admissible in evidence in any action for contribution afterwards brought by him against the persons so personally served by him as aforesaid for the purpose of proving their liability to such contribution but in case he shall not have caused such other persons to be personally served as aforesaid then the liability of such persons to contribution shall be proved in the ordinary manner Provided also that as often as any question shall arise as to the district in which the defendant shall be deemed to be a resident the same shall be determined by the court of petty sessions as incident to the cause.

Officers of Supreme Court not exempt.
10 Vic. No. 10 s. 19.
2 Pring 1240.

14. No person shall be exempt from the jurisdiction of the said courts of petty sessions by reason of his being an attorney solicitor or other officer of the Supreme Court but all such attorneys solicitors and officers shall be subject to the several processes orders judgments and executions of the said courts of petty sessions in the same manner as other persons are subject to the same.

Procedure.

Actions in courts of petty sessions how commenced.
10 Vic. No. 10 s. 20.
2 Pring 1241.

15. Every action in any court of petty sessions shall be commenced by a demand or plaint in writing in which demand the plaintiff shall shortly and in substance set forth his cause of action and shall also state the place of his abode or the place of abode of his attorney if he sue by an attorney and the place of abode of the defendant and shall cause such demand or plaint to be filed with the registrar of the said court at such times before the sitting of the court at which the cause is to be tried as shall be prescribed by rules to be from time to time made by the said court and approved of by the judge of the nearest District Court of the district wherein such small debts court is held and such registrar shall annex the same or a copy thereof to a copy of the summons to be retained in court the original or duplicate of which shall be served on the defendant and which plaint shall be in the form set forth in the schedule C hereunto annexed or as near thereto as the nature of the case will admit always preserving the substance of the same.

SCHEDULE C.

FORMS OF PLAINT.

The following shall be the forms of such plaints in all cases to which they can be applied—

In the Case of Goods Sold.

10 Vic. No. 10 schedule B.
2 Pring 1247.

A. B. of [Brisbane in this district] complains of C. D. of the same place baker that the said C. D. is indebted to him in the sum of five pounds sterling for corn [or hay or other things, briefly describing them] sold and delivered by the said A. B. to the said C. D. in or about the month of February last which sum the said C. D. refuses to pay and the said A. B. prays that he may be adjudged to pay the same.

In the Case of Demand for Rent.

For three months rent due from the said C. D. to the said A. B. on or about the first of February last in respect of the occupation by the said C. D. of a house and garden of the said A. B. [as the case may be] situate at Brisbane which sum &c.

For

For Lodging.

For meat drink washing lodging and other things found and provided by the said A. B. for the said C. D. between the months of December and February last which sum &c.

31 VICTORIA No. 29.

For Hire of Horses.

For the hire of a horse [or as the case may be] and cart of the said A. B. hired and used by the said C. D. for three weeks in or about the month of February last which sum &c.

For Agistment.

For the agistment depasturing and keeping of fifty oxen and one hundred sheep by the said A. B. for the said C. D. between the months of December and February last.

For Work and Labor.

For the work and labor of the said A. B. performed for the said C. D. on or about &c.

For Work and Labor of Servants.

For the work and labor of the servants of and belonging to the said A. B. performed for the said C. D.

For Work and Labor of Servants Horses and Carriages.

For the work and labor of the said A. B. by himself [or his servants or horses carts and carriages as the case may be] performed by the said A. B. [or his servants &c.] for the said C. D. and for timber nails &c. [as the case may be] provided by the said A. B. for the said C. D. and used in such work and labor.

For Wages.

For wages due and payable from the said C. D. to the said A. B. for his service performed as the servant of the said C. D. between the months of December and February last.

For Money Lent.

For money lent by the said A. B. to the said C. D. in or about the month of February last.

On a Promissory Note or Bill of Exchange.

For principal and interest due to the said A. B. on a promissory note drawn by the said C. D. payable to one E. F. or order and by him indorsed to the said A. B. [or on a bill of exchange drawn by one E. F. and accepted by the said C. D. payable to the said A. B.]

On a Bond.

For principal and interest due on a bond bearing date the day of made and entered into by the said C. D. for the payment of £ and interest on the day of last.

For Money due on an Agreement.

For principal and interest upon and by virtue of a certain agreement bearing date &c. [date of agreement] and made between &c. whereby the said C. D. agreed for the considerations therein mentioned to pay to the said A. B. the sum of £ together with lawful interest on the same on the day of now past.

On an Award.

For money due to the said A. B. upon and by virtue of a certain award made by E. F. upon a submission by the said A. B. and the said C. D. to the arbitration of the said E. F. concerning certain matters in difference between them and upon which reference the said E. F. awarded and ordered that the said C. D. should pay the sum of £ to the said A. B. on a certain day now past.

For unlawful Detention of Property.

A. B. complains that C. D. of the same place hath possessed himself of a cow [or waggon or horse or other thing detained] of the value of £ or thereabouts which he unjustly detains from the said A. B. and the said A. B. prays he may be adjudged to restore to him the said cow &c. or pay him the value of the same.

For unlawful Detention of Property Deposited.

That the said A. B. on or about the month of last deposited and left several articles of household furniture and wearing apparel the property of the said A. B. of the value of £ or thereabout with the said C. D. to be safely kept by the said C. D. until he should have occasion for them and the said A. B. saith that he has demanded the said household furniture &c. [or caused the same to be demanded for him] but the said C. D. refuses to deliver up and unjustly detains the same and the said A. B. prays that the said C. D. may be adjudged to restore to him the said household furniture &c. or pay him the value of the same.

For

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For Damage Sustained by Improper Driving.

That on or about the _____ day of _____ last the said A. B. [or the servant of the said A. B.] was driving his cart &c. on the public road between _____ and _____ and the said C. D. [or the servant of the said C. D.] was also on the said road with a certain carriage &c. under his care and direction and the said C. D. [or the servant of the said C. D.] so improperly drove and directed his carriage and horses that thereby his carriage was forced and driven with great violence against the cart of the said A. B. and broke to pieces one of the wheels thereof and the said A. B. was thereby damaged to the amount of £ _____ and the said C. D. refuses to make amends for the same and the said A. B. prays that he may be adjudged to pay the amount of the said damage.

For an Assault or Injury to the Person Wife &c.

The said C. D. on &c. assaulted beat and illtreated the said A. B. [or the wife or child or servant of the said A. B.] to the damage of the said A. B. of £ _____ and the said A. B. prays &c.

For Breaking and Destroying Fences &c. and for Injuries to Land or Cattle.

That the said C. D. on or about the _____ day of _____ broke down and destroyed a fence of the said A. B. at Brisbane in the district of Brisbane whereby the said A. B. hath sustained damage to the amount of £ _____ &c. [or broke down the door of the house of the said C. D. and disturbed him in the peaceable possession thereof or cut down two trees of the said A. B. of the value of £ _____ or wrongfully trampled down destroyed and ate the corn or grass of the said A. B. or drove about and injured the sheep or cattle or killed or wounded a dog horse &c. of the said A. B. of the value of £ _____] and the said A. B. prays &c.

Infants.

Servants &c. under age may sue for wages.
10 Vic. No. 10 s. 18.
2 Pring 1240.

16. In every case where any wages or any other sum whatsoever not exceeding the sum of ten pounds shall be due to any person under the age of twenty-one years it shall be lawful for such person to sue for and recover such debt in any of the said courts of petty sessions in the same manner as if he were of full age.

Executors &c. may Sue or be Sued.

Executors and administrators.
10 Vic. No. 10 s. 33.
2 Pring 1241.*

17. All executors and administrators shall have power to sue and be liable to be sued in the said courts of petty sessions and judgments which have been obtained by plaintiffs but not satisfied previous to their decease as well as all causes of action shall survive to their proper personal representative who may sue out execution in his own name in the same way that the plaintiffs themselves if living might have done.

Plaintiff suing as executor.
10 Vic. No. 10 schedule B.
2 Pring 1247-1248.

18. If the plaintiff sues as executor or trustee of an insolvent or other estate he shall so describe himself in the plaint filed as A. B. executor of C. D. [or A. B. and C. D. trustees to the insolvent estate of E. F. as the case may be].

Particulars.

Particulars.
10 Vic. No. 10 schedule B.
11 Pring 1247.

19. In all cases the items constituting the particulars of claim shall be stated and filed with the plaint or declaration or appended thereto.

Process and Service.

How summons to be served.
10 Vic. No. 10 s. 21.
2 Pring 1241.

20. The summons hereinbefore directed to be served on the defendant may be served by delivering such summons to the wife or servant of the defendant at the defendant's usual place of abode and in case the messenger or bailiff who shall be employed to serve the summons shall demand admittance into the house where the defendant usually resides and such admittance shall be refused it shall be lawful for him to put such copy into the house or to fix such copy upon the door of the house and the same shall in such case be deemed to be good service upon the defendant.

21. Such

21. Such summons shall be in the form in the schedule D hereunder annexed or to the like effect—

SCHEDULE D.

Summons in any Action for any Debt or Demand.
Queensland.

In the court of petty sessions for }
the district }
Small debts jurisdiction. }

To _____ of _____

You are hereby summoned to appear in this court at _____
on the _____ day of _____ next at ten of the clock in the forenoon of the _____
same day precisely to answer the following plaint [*insert copy of plaint and particulars as filed with the registrar*] And take notice that if you intend to defend upon any matter of set-off or excuse you must file particulars of the same otherwise upon proof of the due service of a copy of this summons the cause when called on for hearing will be tried and judgment be given against you for whatever may appear to be due together with such costs as the court may think fit to award And take notice that if you intend to defend upon any matter of set-off or excuse you must file particulars of the same in the office of the registrar clear days at the least before the day herein named for the hearing of the cause otherwise the evidence you may bring forward to support such set-off cannot be admitted.

Dated this _____ day of _____ one thousand eight hundred and _____
(By the court) A. B. registrar.

22. No judgment shall be recorded by any court of petty sessions in any case unless the process in such cause shall by the affidavit of at least one credible witness before the said court or the registrar or a commissioner of the Supreme Court or before a justice of the peace be deposed to have been duly served upon the defendant in the manner hereinbefore directed.

Defences.

23. Defences shall be made in conformity with the notice given by the summons and may be in the form in the schedule E hereunder annexed or to the like effect—

SCHEDULE E.

Form of Defence.
Queensland.

Court of petty sessions for the }
district of _____ }
18 _____ day of _____
and _____
plaintiff
defendant.

Take notice that I intend to defend this action for the following reason [*or reasons as the case may be*]—

1st } [*State each ground as shortly as possible but with sufficient clearness*
2nd } *particularly as to times places persons sums securities or written*
3rd } *instruments &c.*]

To A. B. the abovenamed plaintiff.

Witnesses.

24. Every person summoned as a witness to attend any of the said courts of petty sessions shall attend pursuant to such summons and shall be subject to the like actions (to be brought in one of the said courts) for disobeying such summons as he would be subject to for disobedience to a subpoena issuing out of the Supreme Court and it shall be lawful for every such court of petty sessions to punish

Summons may be in following form.
10 Vic. No. 10. schedule B.
2 Pring 1249.

10 Vic. No. 10 schedule B.
2 Pring 1249.

Affidavit of service to be made.
10 Vic. No. 10 s. 22.
2 Pring 1241.

Defences to be made according to summons.
10 Vic. No. 10 schedule B.
2 Pring 1249.

Witnesses not attending and persons guilty of contempt.
10 Vic. No. 10 s. 26.
2 Pring 1242.

31 VICTORIA No. 29. as for contempt in a summary way by fine not exceeding forty shillings to be levied upon the goods and chattels of the offender or by imprisonment for any time not exceeding fourteen days any plaintiff defendant or witness refusing to be sworn or to answer any lawful question or any person guilty of contempt before any such court Provided always that nothing in this Act contained shall be construed to compel the attendance at any court of petty sessions of any witness who may not be resident in the district where the cause in which he is summoned to give evidence is to be tried nor to compel any witness to attend without tender of his reasonable expenses.

Form of subpoena and attachment.
10 Vic. No. 10.

25. A subpoena for a witness and an attachment for non-appearance to such subpoena may be in the several forms in the schedule F hereunder annexed or to the like effect—

SCHEDULE F.

Summons for Witness.

Queensland.

Court of petty sessions for the } To A. B. of
district of } C. D. of
Small debts jurisdiction. } E. F. of

Schedule C 2 Pring
1250.

You are hereby severally required setting all excuses aside to appear in this court at on the day next at of the clock in the forenoon precisely to testify the truth in a cause therein depending between A. B. of plaintiff and C. D. of defendant on the part of the said A. B. [or C. D. as the case may be] [adding if necessary and to bring with you a certain agreement or note &c. sufficiently describing it as to date and otherwise] and herein fail not at your peril.

(By the court)

Registrar [or Clerk of the Court.]

Attachment for Non-appearance to a Summons.

A. B. plaintiff }
C. D. defendant } Victoria Regina.

Court of petty sessions for the }
district of }

To bailiffs and their deputies and to each and every of them.

Schedule C 2 Pring
1250.

At a court of petty sessions for the district of held on the day 18 it appearing to this court that has been duly served with a copy of a summons to attend this court as a witness in the above case and though duly called came not You and each of you are hereby required to attach the said wherever you may find him for a disobedience to the said summons and him safely and securely keep so that you may have him before a justice of the peace of the said court on the day of to hear and abide such order as shall then be made touching the contempt of the said in disobedience of such summons.

The Hearing.

Proceedings when plaintiff does not appear.

10 Vic. No. 10 s. 7.
2 Pring 1238.

26. If upon the day of the return of any summons or at any adjournment of the said court of petty sessions or of the cause for which the said summons shall have been issued the plaintiff shall not appear either in person or by some person authorised on his behalf or appearing shall not make proof of his claim or demand to the satisfaction of the said court it shall be lawful for the said court if it shall think fit (when the defendant personally or by some one duly authorised on his behalf shall appear and shall not admit the claim or demand) to award to the defendant by way of costs and satisfaction for his trouble and attendance such sum as the court in its discretion shall

shall think fit and such sum shall be recoverable from the plaintiff by such ways and means as any debt or damage can be recovered. Provided always that if the plaintiff shall not appear when called upon and the defendant or some one duly authorised on his behalf shall appear and admit the cause of action to the full amount claimed or a part thereof the court may if it shall think fit proceed to give judgment according to such admission.

27. If on the day so named in the summons or at any adjournment of the court or cause in which the summons was issued the defendant shall not appear either personally or by some one on his behalf sufficiently to excuse his absence or shall neglect to answer the claim or demand the court upon due proof of service of the summons may proceed to the trial of the cause on the part of the plaintiff only and the judgment thereupon shall be as valid as if both parties had attended. Provided always that the court may in such case at the next sitting of the court or otherwise set aside any judgment given in the absence of the defendant and the execution thereupon upon such terms as the said court may think fit on sufficient cause shown for that purpose and grant a new trial of the cause upon the defendant paying the costs of the first trial and giving such security as such court shall think fit to require for the costs of the new trial.

28. If any person summoned to appear shall appear according to the summons and the party complaining shall make default and the court shall adjudge the plaintiff to be nonsuited or if he shall appear and the judgment of the court be for the defendant the said court shall at its discretion in either case adjudge to the said defendant his reasonable costs in like manner as for the party complaining and the said defendant shall be entitled to the like process of execution for the same as the plaintiff would be entitled to if he had established his claim against the defendant.

Evidence.

29. The rules of evidence observed in the Supreme Court shall be applicable to and observed in the trial of all questions of fact in the Small Debts Courts. Except in cases under ten pounds which shall be heard and determined according to equity and good conscience.

30. No evidence shall be given by the plaintiff of any demand or cause of action except such as shall be stated in the summons issued in such suit.

Errors and Mistakes.

31. No process or proceeding of any of the said courts of petty sessions shall be set aside on account of any technical error or mistake only and it shall be competent to every court of petty sessions to decide what is a verbal or technical error or mistake in any action or proceeding and all errors or mistakes which have not a tendency to misinform or mislead the opposite party shall in all cases be deemed merely verbal or technical.

Certiorari.—New Trial.—Appeal.

32. No plaint entered in the said courts of petty sessions nor any order or proceeding had thereon by virtue of this Act shall be removed out of the said courts by writ of *recordari facias loquellam*

or

31 VICTORIA No. 29.

Proceeding if defendant does not appear.
10 Vic. No. 10 s. 8.
2 Pring 1239.

Defendant when entitled to process.
10 Vic. No. 10 s. 29.
2 Pring 1243.

Rules of Evidence.
28 Vic. No. 29 s. 43.
3 Pring 339.

Proof to be limited to matters in summons.
22 Vic. No. 18 s. 66.
1 Pring 507.

Process not to be set aside for technical errors only.
10 Vic. No. 10 s. 42.
2 Pring 1246.

No plaints to be removed.
10 Vic. No. 10 s. 37.
2 Pring 1245.

31 VICTORIA No. 29. or by writ of *certiorari* or otherwise however but all orders made by the said courts of petty sessions shall be final and conclusive to all intents and purposes whatsoever.

New trial.

30 Vic. No. 17 s. 6.

33. It shall be lawful for either party dissatisfied with the decision of the said court to apply at any time within six days from such decision for a new trial to any two or more justices sitting in the city or town in which such cause shall have been heard. Provided that forty-eight hours' notice of such application be given to the opposite party.

Appeal.

30 Vic. No. 17 s. 14.

34. If either party to any cause heard in any of the said courts of petty sessions in which the judgment of the court or the sum sued for shall amount to the sum of ten pounds or upwards shall be dissatisfied with the determination or direction of the court such party may appeal to the nearest district court which shall be held within the district in which said court of petty sessions shall be situate. Provided that such party (if a defendant) shall within five clear days give notice in writing to the opposite party or his attorney of his intention to appeal and shall within one week after such adjudication enter into a recognizance before the registrar of the said court in double the amount of the debt and costs (to be approved of by the clerk of the court) conditioned to abide the event of the appeal and pay such debt and costs as the court shall award or in lieu of giving such security deposit in the hands of the clerk of the court the amount of the judgment together with the sum of ten pounds to answer the costs of such appeal. And in case of a plaintiff appealing he shall give a like notice of appeal and security in the sum of ten pounds (to be approved of by the clerk of the court) conditioned to answer the costs of the appeal if such appeal should be dismissed or in lieu of such security deposit in the hands of the clerk of the court the sum of ten pounds with like condition. And the said district court is hereby authorised and required to hear and determine the matter of the said appeal and may either order a new trial on such terms as the court may think fit or may order judgment to be entered for either party as the case may be and make such order with respect to the taxation of costs of the said appeal as such court may think proper.

Notes of evidence to be taken in cases above £10.

30 Vic. No. 17 s. 15.

35. In all cases above ten pounds when requested the clerk of the court shall take notes of the evidence and append the same to the proceedings and in all cases of appeal the said notes and proceedings shall be transmitted by him to the registrar of the district court to which such appeal is directed two clear days before the sitting of such court and after the determination of such appeal the registrar of such district court shall return the same with the verdict of the appeal appended to the said clerk of petty sessions who shall forthwith pay over to the successful party the debt and costs awarded or due.

Judgment.

Court may make orders as to payment of debt by instalments.

30 Vic. c. 17 s. 7.

36. The court of petty sessions as aforesaid may make orders concerning the time or times and by what instalments any debt or damages or costs for which judgment shall be obtained in the said court shall be paid and all such moneys shall be paid into court unless otherwise directed by the said court.

37. If

37. If there shall be cross judgments between the parties execution shall be taken out by that party only who shall have obtained judgment for the larger sum and for so much only as shall remain after deducting the smaller sum and satisfaction for the remainder shall be entered as well as satisfaction for the smaller sum and if both sums shall be equal satisfaction shall be entered upon both judgments.

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In cross judgments execution only to be taken out for the larger sum.

30 Vic. No. 17 s. 8.

Execution.

38. Whenever any court of petty sessions as aforesaid shall have made an order for the payment of money the amount shall be recoverable in case of default or failure of payment thereof forthwith or at the time or times and in the manner directed by execution against the goods and chattels of the party against whom such order shall be made.

Execution to issue against party failing to pay in pursuance of order.

30 Vic. No. 17 s. 9.

39. If any court of petty sessions as aforesaid shall have made any order for the payment of money by instalments execution upon such order shall not issue against the party until after default in payment of some instalment according to such order and execution or successive executions may then issue for the whole of the said sum of money and costs then remaining unpaid or for such portion thereof as the said court shall order.

Execution not to issue until failure to pay instalments.

30 Vic. No. 17 s. 10.

Arbitration.

40. If both parties in any cause shall agree between themselves not to try their cause before the court of petty sessions but by means of arbitration and shall notify such agreement by a memorandum in writing signed by themselves or their agents the award made on such arbitration shall be binding on both parties and judgment in accordance therewith may be entered in the cause list of the said court of petty sessions for the plaintiff or defendant as the case may be.

By consent of parties causes may be tried by arbitration.

10 Vic. No. 10 s. 43.

2 Pring 1246.

Judgment Summons.

41. It shall be lawful for any party who has obtained any unsatisfied judgment or order in any court held by virtue of this Act for the payment of any debt or damages or costs to obtain a summons from the court of petty sessions for the town within the limits of which such party shall then dwell or carry on his business such summons to be in such form as shall be directed by any rules made as aforesaid for regulating the practice of the courts of petty sessions and to be served personally upon the person to whom it is directed or left at his last known place of abode requiring him to appear at such time as shall be directed by the said rules to answer such things as are named in such summons and if he shall appear in pursuance of such summons he may be examined upon oath touching his estate and effects and the manner or circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him and as to the means and expectation he then had and as to the property and means he still hath of discharging the said debt or damages or liability and as to the disposal he may have made of any property and the person obtaining such summons as aforesaid and all other witnesses

On summons court may examine defendant and call witnesses.

30 Vic. No. 17 s. 11.

31 VICTORIA No. 29. witnesses whom the court shall think requisite may be examined upon oath touching the inquiries authorised to be made as aforesaid and the costs of such summons and of all proceedings thereon shall be deemed costs in the cause.

Court may alter or rescind any order and make further orders.
30 Vic. No. 17 s. 12.

42. It shall be lawful for any court before whom such summons shall be heard if it shall to such court appear fitting to rescind or alter any order that shall have been previously made against any defendant so summoned before such court for the payment by instalments or otherwise of any debt or damages recovered and to make any further or other order either for the payment of the whole of such debt or damages and costs forthwith or by any instalments or in any other manner as to such court may seem reasonable and just.

Court may suspend or stay any judgment order or execution.
30 Vic. No. 17 s. 13.

43. If it shall at any time appear to the satisfaction of the court by the oath or affirmation of any person or otherwise that any defendant is unable from sickness or other sufficient cause to pay and discharge the debt or damages recovered against him or any instalment thereof ordered to be paid as aforesaid it shall be lawful for the court in its discretion to suspend or stay any judgment order or execution given made or issued in such action for such time and on such terms as the said court shall think fit and so from time to time until it shall appear by the like proof as aforesaid that such temporary cause of disability has ceased.

Execution.

Execution of process.
10 Vic. No. 10 s. 27.
2 Pring 1242.

44. In any case where any court of petty sessions shall make any order or decision for the payment of money it shall be lawful for the registrar of the said court on the application of the party in whose favor such order or decision has been made to issue a precept in the nature of a writ of *fieri facias* which precept shall be directed to any bailiff of any of the said courts or his deputies who are hereby empowered to execute the same in any part of the said territory in the same manner and in all respects as process of a similar nature issuing out of the Supreme Court may be executed by the sheriff or deputy sheriff Provided always that no real or leasehold property be liable to be levied upon under writs of execution out of the said courts.

Lever on goods when made.
10 Vic. No. 10 s. 35.
2 Pring 1245.

45. No judgment of any of the said courts of petty sessions against the goods and chattels of the defendant in any suit or action brought therein shall be executed at any time after sunset and before sunrise and if any person shall execute any such judgment after sunset and before sunrise such person shall be liable to a fine of ten pounds which shall be imposed and if necessary enforced by an order of the court of petty sessions for the distress and sale of the offender's goods.

Form of writs of execution.
10 Vic. No. 10 s. 28.
2 Pring 1243.

46. Precepts for execution shall be in the form set forth in the schedule G hereunto annexed or as near thereto as the nature of the case will permit always preserving the substance of the same.

SCHEDULE G.

Precept in the Nature of a Fieri Facias.

Execution against goods.

Court of petty sessions for the }
district of }

Schedule C 2 Pring To
1249. district of

of
appointed to execute the processes of this court and to each and every of them

bailiffs of the court of petty sessions for the
and to the deputy bailiffs duly authorised and

In

In pursuance and by virtue of a decision of the court of petty sessions for the 31 VICTORIA No. 29. district of _____ made on the _____ day of _____ 18 _____ you are hereby required to levy of the goods and chattels of _____ to satisfy _____ for the amount of _____ pounds _____ shillings and _____ pence being the amount of judgment and costs which in the said court he was adjudged to pay to the said _____ and after levy duly made thereof forthwith to pay the same into this office And what you shall do herein certify and return to this court at the expiration of one calendar month from the date hereof or within three days after this warrant shall be executed if that shall sooner happen.

Dated this	_____	day of	18
	£ s. d.	(By the Court)	A.B. Registrar.
Judgment ...	...		
Costs ...	...		
Execution ...	...		
Alias ...	...		
	£		

N.B. The bailiff shall certify to the court under his hand (and on the back of the precept where it remains in his possession) the date of execution and what in particular he shall have done and if unexecuted why it is so.

47. The registrar of any of the said courts shall grant a special precept for execution when demanded by the plaintiff or defendant as the case may be in any suit wherein such precept may be issued and such registrar shall appoint one or more special bailiffs to be named by the party applying for it to execute such precept Provided that every person appointing a bailiff to act under any special precept shall together with two sufficient sureties execute to the registrar of the court from which the precept issues a bond in the penalty of fifty pounds or for a larger sum not exceeding one hundred pounds if the said court shall so direct conditioned for the proper performance of the duties of his office and such bond shall vest in the registrar of the court for the time being and may from time to time be sued on in his own name or in the name of any person to whom it may be assigned under any order of the court which assignment shall be made by an indorsement by the registrar for the time being and any person who shall sustain any damage by the neglect or misconduct of any such bailiff may proceed before any court of competent jurisdiction (the amount of such damage not exceeding fifty pounds or the sum specially directed by the court as aforesaid) and the bond so given shall stand and be an additional security for such damages and shall if necessary be put in suit to recover the sum and costs from the parties thereto or any of them.

Special precept at peril of party applying.
10 Vic. No. 10 s. 30.
2 Pring 1243.

48. And whereas persons residing in and contracting debts within the limits of one of the said courts of petty sessions to avoid execution upon judgments recovered against them may occasionally remove into the limits of another of the said courts whereby plaintiffs will be prevented from recovering their debts by reason of the defendants not being resident within the jurisdiction in which such judgments have been obtained be it therefore enacted That the removal by any defendant from one of the said jurisdictions into another shall not prevent any plaintiff proceeding against such defendant in the jurisdiction where such defendant may happen to be resident at the time of issuing execution and it shall be lawful for the bailiff or his deputy

Defendant contracting debts in one district and removing into another.
10 Vic. No. 10 s. 31.
2 Pring 1243.

31 VICTORIÆ No. 29. deputy of any court of petty sessions to take such defendant into custody or to dispose of his goods in like manner as if he had been a resident of the district in which judgment was recovered against him.

Rights of landlords.

10 Vic. No. 10 s. 36.

2 Pring 1215.

49. No execution awarded against the goods of any party shall deprive any landlord of the power vested in such landlord by an Act passed in the eighth year of the reign of Her late Majesty Queen Anne intituled "*An Act for the better security of rents and to prevent frauds committed by tenants*" of recovering one year's rent in pursuance of the said Act.

Disputed Property.—Interpleader.

Proceeding as to
disputed property
levied upon.

10 Vic. No. 10 s. 32.

2 Pring 1213.

50. If previously to the sale of any property levied upon such property being in the actual or ostensible possession of the party against whom the writ is directed a claim shall be made to it by any third person and such claim shall be deposed to before a justice of the peace and in such deposition it shall be averred that the party in whose actual or ostensible possession such property so levied upon be found is not the true owner but the bailee thereof such property shall be released from execution and the cost of the levy if any shall be either added to the amount of the costs charged in the execution or defrayed by the party claiming such property as the court of petty sessions shall in its discretion direct. Provided always that no absolute or conditional bill of sale or mortgage of chattel property whatever shall protect such property so levied upon from sale unless such bill of sale or mortgage be produced to the bailiff and provided also that such bill of sale or mortgage shall have been executed at least fourteen days before the summons shall have been served upon the defendant in the case in which the writ of execution issued and unless there be expressed in such mortgage a certain time for the payment of the principal sum for which such instrument was given as security and such time does not exceed one year from the date of the instrument and at the expiration of that time the holder of such bill of sale or mortgage shall not renew it but either assume possession or proceed to the sale of the property so secured or relinquish all claim to the protection of it from the debts of other creditors and provided likewise that such bill of sale or mortgage shall have been registered by the registrar at the nearest court of petty sessions within one week of the date of the execution of such bill of sale or deed of mortgage. Provided further that protection from sale under any circumstances shall only extend to such articles of chattel property as are specifically set forth and enumerated in a schedule to be annexed to such bill of sale or mortgage as the case may be and provided also that the party entitled thereto may nevertheless proceed to enforce the levy and sale by taking out a special writ of execution in manner hereinbefore directed and that in every case in which a special writ of execution is taken out neither the registrar nor bailiffs of the courts of petty sessions shall be responsible for any act done under or in respect of such process by color thereof but the person aggrieved by any such act shall have a remedy and right of action against the party or his sureties to whom the writ of execution was granted.

Relief of bailiffs in
charge of goods under
execution.

51. And whereas difficulties may sometimes arise in the execution of process against goods and chattels issued under the authority of

of the courts of petty sessions by reason of claims made to such goods and chattels by persons not being the parties against whom such process has issued whereby bailiffs and other officers may be exposed to the hazard and expense of actions and it is reasonable to afford relief and protection in such cases to such bailiffs and other officers be it therefore enacted That when any such claims shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof it shall be lawful for the court from which such process issued upon application of such bailiff or officer made before or after the return of such process and as well before as after any action brought against such bailiff or other officer to call before it by an order for that purpose made as well the party issuing such process as the party making such claim and thereupon to pronounce its decision in a summary manner for the adjustment of such claim and the relief and protection of the bailiff or other officer which decision shall be final and conclusive against the said parties and all persons claiming by from or under them and to make such order for sale of the goods and deposit of the proceeds in court pending the said inquiry and otherwise as shall appear to be just according to the circumstances of the case and the cost of all such proceedings shall be in the discretion of the said court of petty sessions.

31 VICTORIAE No. 29.
10 Vic. No. 10 s. 34.
2 Pring 1244.

Protection and Indemnities.

52. And for the protection of persons acting in execution of this Act be it enacted That all actions for anything done under the provisions thereof shall be commenced within six months after the fact was committed and that no writ shall be sued against nor process served upon any justice of the peace registrar bailiff or other officer of any court of petty sessions for anything done in the execution of or by reason of his office until one calendar month next after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person who is to bring such action and the name and place of abode of the attorney or agent and that a fee of twenty shillings shall be paid for preparing or serving every such notice and no more.

Limitation of actions
against officers.
10 Vic. No. 10 s. 39.
2 Pring 1245.

53. All sheriffs and deputy sheriffs keepers of prisons or other persons whosoever who shall do anything under this Act in obedience to any legal order of any such court of petty sessions shall be and they are hereby indemnified for whatsoever shall be done by them respectively in obedience thereto and if any action whatsoever shall be brought against any such sheriff keeper or person or against any justice of the peace or officer of any such court of petty sessions for performing any duty of his office in pursuance of this Act such sheriff justice keeper officer or other person may plead the general issue and give the special matter in evidence thereupon and if the plaintiff be nonsuited or shall discontinue his action or a verdict shall pass against him or judgment be had for the defendant upon demurrer such defendant shall have double costs.

Sheriff and other
persons indemnified.
10 Vic. No. 10 s. 38.
2 Pring 1245.

Penalties.

31 VICTORIÆ No. 29.

*Penalties.*Penalty on officer
neglecting duty.10 Vic. No. 10 s. 41.
2 Pring 1215.

54. If any bailiff deputy bailiff or other officer of any court of petty sessions employed to execute any process of execution shall by connivance wilful neglect or omission cause or suffer the goods of the party against whom such execution shall be awarded to be rescued or carried away so that such execution shall not have its due effect it shall be lawful for any justice of the court of petty sessions out of which such process shall have issued upon complaint and due proof thereof made upon the oath of one credible witness to order such bailiff deputy or officer to pay the sum of money for which such execution was awarded or such part thereof as the said justice may think proper to the party complaining and to enforce the payment thereof by the same means as are herein provided for the recovery of debts.

*Commencement and Short Title.*Commencement of
Act.

Short title.

55. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Small Debts Act of 1867.*"

An Act for the Speedy Recovery of the Possession of Tenements Unlawfully Held Over.

31 VICTORIA No. 27.

[28th December, 1867.]

BE it enacted by the Queen's Most Excellent Majesty by and Preamble.
with the advice and consent of the Legislative Council and
Legislative Assembly of Queensland in Parliament assembled and by
the authority of the same as follows—

Interpretation.

1. In construing this Act the word "land" shall be taken to signify lands houses or other corporeal hereditaments and the word "agent" shall be taken to signify any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof or specially authorised to act in the particular manner by writing under the hand of such landlord.

Construction of terms.
17 Vic. No. 10 s. 10.
2 Cary 964.
"Land."
"Agent."

Jurisdiction and Procedure.

2. When the term or interest of the tenant of any land held by him for any term of years or for any less estate or interest either with or without being liable to the payment of any rent shall have expired by effluxion of time or shall have been determined by notice to quit or demand of possession and such tenant or any person claiming under him who shall actually occupy such land or any part thereof shall neglect to quit and deliver up possession of such land or of such part thereof respectively it shall be lawful for the landlord of such land or his agent to exhibit his information before any justice of the peace and such justice shall thereupon issue a summons and if required so to do a duplicate thereof under his hand against the person so neglecting to quit and deliver up possession requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which the land of which possession is sought to be recovered shall be situated shall usually sit to show cause why such landlord should not be put into possession of such land and if at the time and place appointed in and by such summons or any adjournment thereof (whether the tenant or occupier shall or shall not appear) such landlord or such agent shall give due proof according to law to the satisfaction of the justices before whom the matter shall be heard or the majority of them of the creation and of the expiration or determination in manner aforesaid of the tenancy and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land and that the tenant or occupier against whom such summons shall be issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons then (upon proof of the service of the summons in case the tenant or occupier shall not appear) it shall be lawful for the said justices or the majority of them unless reasonable cause shall be shown or shall appear to them to the contrary

Possession of tenements may be recovered before justices of the peace.
17 Vic. No. 10 s. 2.
2 Cary 961.

Information to be exhibited and summons issued.

Proceedings at the hearing.

On proof of landlord's case adjudication to be in his favor.

31 VICTORIA No. 27. contrary to adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land and to award to the said landlord or to such agent by whom such information shall be exhibited his costs to be assessed by the said justices or the majority of them and to issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land shall be situate or to any of them or to any other person or persons as a special bailiff or special bailiffs in that behalf requiring and authorising them or him within a period to be therein named not less than seven nor more than thirty clear days from the date of such warrant to enter (by force if needful) into such land and to give possession of the same to such landlord or to such agent on his behalf and such warrant shall be a sufficient authority to such constables peace officers or bailiff or bailiffs to enter upon such land with such assistants as they or he shall deem necessary and to give possession accordingly Provided

Costs warrant of possession to issue.

Not to be executed on Sunday Good Friday or Christmas Day or except between 9 a.m. and 4 p.m.
On failure of appearing a proof by or on behalf of landlord adjudication in favor of tenant or occupier.

Mode of recovering costs.

Where not expressly provided for justices to proceed under 14 Vic. No. 43.
17 Vic. No. 10 s. 11.
2 Cary 964.

And provisions therein as to prohibition to apply to proceedings under this Act.

also that no entry upon any such warrant shall be made on a Sunday Good Friday Christmas Day or at any time except between the hours of nine of the clock in the morning and four of the clock in the afternoon and in case such landlord or agent shall fail to appear or to give such proof as aforesaid at the time and place aforesaid it shall be lawful for such justices or the majority of them to dismiss his information and to award to the person against whom such information shall be exhibited his costs to be assessed by such justices or the majority of them and all costs which shall be awarded under the provisions hereof together with the reasonable charges of taking and keeping the distress shall be recoverable by distress and sale of the goods and chattels of the person who shall be adjudged or ordered to pay the same and the proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceeding upon the trial of an issue of fact in the Supreme Court of the said colony and the parties to such information shall by themselves their counsel or attorneys have the like right of addressing the court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

3. In all proceedings under this Act not herein expressly provided for the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions and all such provisions shall so far as the same are applicable be in force and observed in all proceedings under this Act not herein expressly provided for but no person shall be imprisoned for non-payment of any costs awarded under the provisions hereof and any person who shall feel aggrieved by any order adjudication or warrant made or issued under the provisions hereof shall have the like power of applying to the Supreme Court of the said colony or any judge thereof in order to obtain a prohibition to restrain any justice or justices by whom any such order adjudication or warrant may be made or issued and the landlord or agent or tenant or occupier or other person interested in maintaining the same from proceeding (or from further proceeding

proceeding as the case may be) upon or in respect of the same as by any Act in force for the time being may be given to any person feeling aggrieved by the summary convictions or orders of justices of the peace and all provisions of any Act in force for the time being in reference to applying for and obtaining a prohibition in respect of such summary convictions and adjudication and warrant made or issued under the provisions of this Act shall be applied in like manner as far as practicable as if every such order adjudication or warrant were such a summary conviction or order as aforesaid.

4. No objection shall be taken or allowed to any information complaint summons conviction or warrant made or preferred under or by virtue of this Act for any alleged defect in substance or in form or for any variance between it and the evidence adduced on the part of the complainant but if any such variance or defect shall appear to the justice or justices present at and acting in the hearing of the case it shall be lawful for such justice or justices upon such terms as he or they shall think fit to cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Service of Summons.

5. Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same shall issue and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid then by leaving the same with the wife or servant of such person or some other competent person either on the land in respect of which such summons shall have been issued or at the place of abode of the person so summoned and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof shall be delivered unless such last-mentioned person shall prevent such explanation from being made. Provided always that if notwithstanding all due diligence in that behalf it shall from any cause be impracticable to serve such summons in any of the ways aforesaid then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same shall have issued shall be deemed to be good service of such summons.

Suspension of Proceedings.

6. It shall be lawful for the justices by whom such adjudication shall be made (if it shall appear to them fit and reasonable and just so to do) to postpone the issuing of such warrant and other proceedings under such adjudication or to suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices shall seem meet.

7. If any tenant or occupier against whom any such warrant shall be granted shall at the time when the adjudication in respect thereof shall be made offer to give security to defend an action of ejectment

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Information &c. not to be objected to for alleged defects in substance or form but such defects may be amended by the justices.

17 Vic. No. 10 s. 12.
2 Cary 965.

The manner in which summons shall be served.

17 Vic. No. 10 s. 4.
2 Cary 962.

Original or duplicate to be served personally or if that not practicable on wife or servant.

Nature of summons to be explained unless such explanation prevented.

Or if above modes impracticable by posting on the land.

Power to justice to suspend proceedings on adjudication for fifteen days.

17 Vic. No. 10 s. 3.
2 Cary 962.

Execution of warrant may be stayed on bond of sureties being given to pay costs of action

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to recover land &c. on
offer to give such secu-
rity execution of
warrant to be sus-
pended for three
days.
17 Vic. No. 10 s. 5.
2 Cary 962.

And if during that
interval bond be given
warrant to be void.

ejectment or other appropriate action against him for recovery of possession of the land in respect of which such adjudication shall be made in the Supreme Court or any other court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord by or for or on whose behalf the information upon which such adjudication shall be made shall have been exhibited then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days and if during that interval such tenant or occupier shall give security by a joint and several bond of two other responsible persons to be approved of by the justices by whom the matter of such information shall be heard or the majority of them in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action and the probable length of time which must elapse before the same can be determined) shall seem reasonable and they shall direct to such landlord his heirs executors and administrators conditioned to be void (in case such landlord his heirs executors or administrators shall succeed in such action) upon payment of all costs of suit as shall be awarded to or recovered by such landlord his heirs executors or administrators in such action and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord his heirs executors or administrators shall obtain possession of such land by virtue of such action and of all such costs as shall or may be awarded by such justices or the majority of them to be paid by such tenant or occupier to such landlord or his agent then and in such case such warrant shall not be executed or put in force but shall become and be void and no further proceeding shall be taken under or in pursuance of such adjudication for recovery of such last-mentioned costs or otherwise.

The Bond.

Bond to be approved
and certified by
justices.
17 Vic. No. 10 s. 6.
2 Cary 963.

Mode for parties to
bond to obtain relief
in case of delay on
the part of the land-
lord or otherwise.

8. Every such bond as hereinbefore mentioned shall be approved of and certified as so approved of by the justices by whom the matter of such information shall be heard or the majority of them by a memorandum in writing signed by them which memorandum shall be on or annexed to such bond Provided always that the court in which any such action of ejectment or other action for the recovery of the land in respect of which such adjudication shall have been made or any judge of such court may upon application of the parties bound thereby or either of them their or either of their heirs executors or administrators in a summary way give such relief to the person or persons making such application or make such other order in the premises as may be agreeable to justice and every rule or order made by such court or judge thereupon shall have the nature and effect of a defeasance to such bond Provided also that if any unreasonable delay shall occur in the bringing or prosecuting such action of ejectment or other action for the recovery of such land then the court in which such action shall be brought or any judge thereof in case no such action shall have been brought and be depending then any court having competent jurisdiction to entertain any such action or any judge of any such court may upon application of the parties

parties bound by any such bond or either of them their or either of 31 VICTORIA No. 27.
 their heirs executors or administrators in a summary way order or
 direct such bond to be cancelled and given up to the person or
 persons making such application or make such other order or
 direction in the premises as may be agreeable to justice and if a
 rule or order shall thereupon be made by any court or judge ordering
 or directing such bond to be cancelled then such bond shall upon the
 making of such rule or order become and be thenceforth void but
 without prejudice to any action or other remedy thereon for any
 previous breach of the condition of defeasance thereof.

Justices.

9. It shall not be lawful to bring any action or prosecution
 against the said justices by whom such warrant as aforesaid shall
 have been issued against any constable peace officer or bailiff by
 whom such warrant may have been executed for issuing such warrant
 or executing the same respectively by reason that the landlord by or
 for or on whose behalf the same shall be obtained had not lawful
 right to the possession of the land in respect of which such warrant
 shall have been issued.

Protection of justices
 constables &c.
 17 Vic. No. 10 s. 7.
 2 Cary 963.

Landlords.

10. In all cases where at the time of executing any such
 warrant the landlord by whom or for or on whose behalf such
 warrant shall have been obtained shall have as against the person
 in possession of such land lawful right to the possession thereof then
 neither such landlord nor his agent nor any other person acting on
 his behalf shall be deemed to be a trespasser by reason merely of any
 irregularity or informality in the way of proceeding for obtaining
 possession under the authority of this Act but the party aggrieved
 may if he think fit bring an action on the case for any such
 irregularity or informality.

Where landlords' title
 good not to be deemed
 a trespasser but be
 liable by action on the
 case for any irregu-
 larity.
 17 Vic. No. 10 s. 8.
 2 Cary 964.

11. No such warrant nor anything herein contained shall
 protect any landlord by whom or for or on whose behalf any such
 warrant for the delivery of possession of any land shall be obtained
 as aforesaid from any action which may be brought against him by
 any person in possession of such land or any part thereof for or in
 respect of any entry upon or taking possession thereof under or by
 virtue of any such warrant where such landlord shall not at the time
 of executing the same have as against such person in possession
 lawful right to the possession thereof and in all such cases as last
 aforesaid such landlord shall be liable in respect of such entry and
 taking possession in like manner as if the same had been made or
 taken by him or by his direction without the authority of any
 such warrant. Provided also that nothing herein contained shall
 prejudicially affect any rights to which any person may be entitled
 as outgoing tenant by custom of the country or otherwise.

Act not to protect
 persons who have no
 legal right.
 17 Vic. No. 10 s. 9.
 2 Cary 964.

And in such case
 landlord to be deemed
 a trespasser.

Forms.

12. The forms in the schedule to this Act annexed or any
 other forms to the like effect may be used in carrying out of the
 provisions of this Act. Provided always that this enactment shall
 not invalidate any information summons adjudication order bond
 warrant

Forms.
 17 Vic. No. 10 s.
 2 Cary 965.

31 VICTORIA No. 27. warrant or other proceeding which may be laid or drawn in any other appropriate form or manner.

Commencement of Act.

Short title.

Commencement and Short Title.

13. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Summary Ejectment Act of 1867.*"

THE SCHEDULE REFERRED TO.

Form of Information.

District of [*the district in which the land of which possession is sought to be recovered is situate*]

To wit.

Be it remembered that on the day of in the year of our Lord one thousand eight hundred and [*describing*] in the colony of Queensland A.B. [*or C.D. the agent of A.B.*] the landlord of the land hereinafter described informed me Esquire, one of Her Majesty's justices of the peace in and for the colony aforesaid [*describing the jurisdiction of the justices before whom the information is exhibited*] that theretofore E.F. held from the said A.B. by virtue of a tenancy for a term of years [*or from year to year or from month to month or from week to week or at will or at sufferance or otherwise as the case may be*] all that parcel of land [*or all that messuage or dwelling-house or otherwise according to the fact*] situate in the [*city town parish or other locality*] in the district of in the colony aforesaid bounded [*describing the land by name abutments or otherwise with sufficient particularity to identify the same*] and that the said tenancy expired by effluxion of time [*or was determined by notice to quit or demand of possession*] on or about the day of then instant [*or last past or otherwise according to the fact*] and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F. [*or G.H. a person claiming under the said E.F.*] and that the said E.F. [*or G.H.*] neglected to quit and deliver up possession thereof and that the said A.B. then had lawful right as against the said E.F. [*or G.H.*] to the possession of such land and thereupon the said A.B. [*or C.D.*] prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid on the }
day and year first above written }
before me

J.P.
The justice abovenamed.

Form of Summons.

To E.F. [*or G.H.*]

Whereas an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by A.B. [*or C.D. the agent of A.B.*] praying that the said A.B. may under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by you [*or E.F. under whom it is also therein alleged you claim*] by virtue of a tenancy for a term of years [*or otherwise as averred in the information*] which expired by effluxion of time [*or otherwise as averred in the information*] on or about the day of now instant [*or last past or otherwise as averred in the information*] and that you neglect to quit and deliver possession of the said land These are therefore to command you in Her Majesty's name to be and appear on the day of now instant [*or next ensuing*] at the hour of of the clock in the forenoon at [*the place where the petty sessions of the district in which the land in question is situated usually sit*] and so from day to day at the same hour of the day until the matter of the said information shall be disposed of before such two or more of Her Majesty's justices of the peace as may be there to show cause why the said A.B. should not be put into possession of the said land and why you should not be adjudged to pay to the said A.B. [*or C.D.*] his costs of proceeding to obtain and of recovering possession of the said land And
take

take notice that if you fail to appear and show cause as aforesaid you will be liable to have a 31 VICTORIÆ No. 27.
warrant issued against you under which such possession of the said land may be given to the
said A.B. and to be adjudged to pay such costs as aforesaid.

Given under my hand the day }
of in the year of our Lord }
one thousand eight hundred and }
J.P.
The justice abovenamed.

Form of Adjudication in favor of Landlord and Award of Costs to him or his Agent.
District of [*As in information*] }
To wit. }

Whereas an information was exhibited on the day of now instant
[or last past] by A.B. [or C.D. the agent of A.B.] praying that the said A.B. might under
and by virtue of the provisions of the statute in such case made and provided be put into
possession of [*here describe the land as in the information*] of which it was therein alleged
that E.F. [or G.H.] was then in the actual occupation on the ground that the same was
held from the said A.B. by the said E.F. [or E.F. under whom it was also therein alleged
the said G.H. claimed] by virtue of a tenancy for a term of years [or otherwise as averred
in the information] which expired by effluxion of time [or otherwise as in the information]
on or about the day of then instant [or last past or otherwise as averred
in the information] and that the said E.F. [or G.H.] neglected to quit and deliver possession
of the said land And whereas thereupon a summons to the said E.F. [or G.H.] was duly
issued and served whereby the said E.F. [or G.H.] was duly summoned to be and appear on
the day of now instant [or last past] at the hour of of the clock
in the forenoon at [*as in the summons being the place where the petty sessions of the said
district usually sit*] and so from day to day until the matter of the said information should
be disposed of before such two or more of Her Majesty's justices of the peace as might then
be there to show cause why the said A.B. should not be put into possession of the said land
and why the said E.F. [or G.H.] should not be adjudged to pay to the said A.B. [or C.D.]
his costs of proceeding to obtain and of recovering possession of the said land And whereas
the matter of the said information has in pursuance of such summons to the said E.F. [or
G.H.] as aforesaid been duly heard by and before us [*the justices making the adjudication*]
of Her Majesty's justices of the peace in and for the colony aforesaid [*describing the
jurisdiction of the justices by whom the matter is heard*] at the said place at which the said
E.F. [or G.H.] was so summoned to appear as aforesaid we being all [or a majority of] the
justices then and there sitting and the said A.B. [or C.D.] hath given due proof according
to law to the satisfaction of us of the creation and of the expiration [or determination] in
manner aforesaid of the said tenancy and the said A.B. had at the time of the service of the
said summons upon the said E.F. [or G.H.] and at the time of the said hearing and now has
lawful right as against the said E.F. [or G.H.] to the possession of the said land and that
said E.F. [or G.H.] was the tenant in possession or the actual occupier of the said land at
the time of the said service of the said summons And whereas the said E.F. [or G.H.]
duly appeared in pursuance of the said summons and according to the exigency thereof
before us to defend himself touching the matter of the said information but did not show
any reasonable cause to us [or And whereas the said E.F. [or G.H.] not having appeared in
pursuance of the said summons or according to the exigency thereof due proof of the service
of the said summons was given to us] and no reasonable cause was in fact shown or appeared
to us why we should not adjudge the said A.B. to be entitled to the possession of the said
land Now therefore we do hereby adjudge that the said A.B. is entitled to the possession
of the said land and that a warrant shall issue in accordance with the provisions of the
statute in such case made and provided for putting the said A.B. into possession of the said
land within (not less than seven nor more than) thirty clear days from the date thereof [*here
add in case costs shall be awarded to the landlord or his agent*] and we do assess the costs
of the said A.B. [or C.D.] of proceeding to obtain and of recovering possession of the said
land at the sum of £ which said sum of money we do award to the said A.B. [or
C.D.] for his said costs and we do order and adjudge that the same shall be paid forthwith
by the said E.F. [or G.H.] to the said A.B. [or C.D.] And we do further award and
adjudge that if the same shall not be paid forthwith that the same be levied by distress and
sale of the goods and chattels of the said E.F. [or G.H.]

Witness our hands and seals the }
day of in the year of our Lord } [L.S.] J.P.
one thousand eight hundred and } [L.S.] J.P.

Form

31 VICTORIÆ No. 27.

*Form of Warrant of Possession.*District of [*as in the information*]

To a constable [*or peace officer or acting*] for the district of
 [*or other place as the case may be*] in the colony of Queensland and to all other
 constables and peace officers of [*or acting for the said district or other
 place as the case may be*] and to each of them [*or To all constables and
 peace officers of [or acting] for the district of [or other place as the
 case may be] in the colony of Queensland and to each of them*] [*or To*
 a special bailiff for the purposes hereinafter mentioned] [*or To*
 and special bailiffs for the purposes hereinafter mentioned and to
 each of them.]

Whereas we the undersigned of Her Majesty's justices of the peace in and for
 the colony of Queensland [*describing the jurisdiction of the justices making the adjudication*]
 in pursuance of the provisions of the Act of the Parliament of the said Colony passed
 in the thirty-first year of the reign of Her Majesty Queen Victoria intituled "*An
 Act for the speedy recovery of the possession of tenements unlawfully held over*"
 did on this day of in the year of our Lord one thousand eight hundred
 and upon hearing the matter of an information exhibited by A.B. [*or C.D.*
 the agent of A.B.] against E.F. [*or G.H.*] adjudge that the said A.B. is entitled to the
 possession of [*here describe the land as in the information*] and we did also adjudicate that
 a warrant should issue in accordance with the provisions of the said Act for putting the
 said A.B. into possession of the said land within [*as in adjudication*] clear days from the
 date thereof Now therefore we do authorise and command you [*and if directed to more
 than one person each of you*] within the period of clear days from the date hereof
 on any day except on Sunday [*and if either Christmas Day or Good Friday shall occur
 during the interval add or Christmas Day or Good Friday as the case may require*] between
 the hours of nine of the clock in the forenoon and four of the clock in the afternoon
 (with or without the aid of the said A.B. [*or C.D.*] or any other person or persons whom
 you may think requisite to call to your assistance) to enter by force if needful into and
 upon the said land and eject all persons thereout and therefrom and to give possession of the
 same to the said A.B. [*or C.D.* as such agent as aforesaid on behalf of the said A.B.]

Given under our hands the day
 of in the year of our Lord
 one thousand eight hundred and J.P.
 J.P.

Form of Bond as Security to Defend Action and Supersede Execution of Warrant.

Know all men by these presents that we K.L. of in the colony of Queensland
 and M.N. of in the colony aforesaid are jointly and severally held
 firmly bound unto A.B. of in the colony aforesaid in the sum of pounds
 of lawful British money to be paid to the said A.B. his executors or administrators for which
 payment to be well and truly made we bind ourselves our heirs executors and administrators
 jointly and each of us binds himself his heirs executors and administrators severally by these
 presents.

Sealed with our seals dated the
 day of in the year of our Lord one
 thousand eight hundred and

Whereas Esquires of Her Majesty's justices of the peace
 in and for the colony of Queensland [*describing the jurisdiction of the justices by whom the
 adjudication was made*] in pursuance of the provisions of the Act of the Parliament
 of the said colony passed in the thirty-first year of the reign of Her Majesty Queen
 Victoria intituled "*An Act for the speedy recovery of possession of tenements
 unlawfully held over*" did on the day of now instant [*or last
 past*] upon hearing the matter of an information exhibited by the abovenamed A.B. [*or
 C.D.* as agent of the abovenamed A.B.] against E.F. [*or G.H.*] adjudge that the said A.B.
 was entitled to the possession of [*here describe the land as in the information*] and did also
 adjudge that a warrant should issue according to the provisions of the said Act for putting
 the said A.B. into possession of the said land [*here add in case costs were awarded to the
 landlord or his agent*] and the said justices assessed the costs of the said A.B. [*or C.D.*]
 of proceeding to obtain and of recovering possession of the said lands at the sum of
 [*as in the adjudication*] which sum they did award to the said A.B. [*or C.D.*] for his said
 costs and the said justices did order and adjudge that the same should be paid by the said
 E.F.

E.F. [or G.H.] to the said A.B. [or C.D.] And whereas at the time when the said adjudication was made the said E.F. [or G.H.] in pursuance of the provisions in that behalf contained in the said Act offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said colony or any other court having competent jurisdiction in that behalf to be brought by or on behalf of the said A.B. And whereas the said justices in accordance with the provisions in that behalf contained in the said Act directed that the sum of money in which the bond in that behalf mentioned in the said Act should be given should be the abovenamed sum of _____ pounds and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond and the said justices have approved hereof as such bond as aforesaid Now the condition of the above written bond is such that (in case the said A.B. his heirs executors or administrators shall succeed in such action as aforesaid for the recovery of the said land) if the said E.F. [or G.H.] his executors or administrators or any person on his or their behalf shall pay to the said A.B. his heirs executors or administrators all such costs of suit as shall be awarded to or recovered by the said A.B. his heirs executors or administrators in such action and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B. his heirs executors or administrators shall obtain possession of the said land by virtue of such action [here add in case costs are awarded to the landlord or his agent] and the said sum of _____ so ordered and adjudged by the said justices to be paid by the said E.F. or G.H. to the said A.B. or C.D.] as aforesaid then the said above-written bond shall be void.

Signed sealed and delivered by the above-		
named K.L. and M.N. in the presence	[L.S.]	K.L.
of O.P. the attesting	[L.S.]	M.N.
witness or witnesses.		

Form of Memorandum to be Written on or Annexed to such Bond and signed by the Justices.

We the justices named in this [or the annexed] bond do hereby certify that we approve thereof.

As witness our hands the	day	
of _____ in the year of our Lord one		J.P.
thousand eight hundred and _____		J.P.

Form of Adjudication in favor of Tenant or Occupier and Award of Costs to him.

District of [as in the information] }

To wit.

Whereas an information was exhibited on the _____ day of _____ now instant [or last past] by A.B. [or C.D. the agent of A.B.] praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain land situate in the district of _____ in the Colony of Queensland therein described or referred to of which it was therein alleged that E.F. [or G.H.] was then in the actual occupation and thereupon a summons to the said E.F. [or G.H.] was duly issued and served whereby the said E.F. [or G.H.] was duly summoned to be and appear on the _____ day of _____ now instant [or last past] at the hour of _____ of the clock in the forenoon [as in the summons being the place where the petty sessions of the said district usually sit] and so from day to day until the matter of the said information should be disposed of before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said A.B. should not be put into possession of the said land And whereas the matter of the said information has in pursuance of such summons to the said E.F. [or G.H.] as aforesaid been duly called on before us [the justices making the adjudication] of Her Majesty's justices of the peace in and for the Colony aforesaid [describing the jurisdiction of the justices before whom the matter is called on] at the said place at which the said E.F. [or G.H.] was so summoned to appear as aforesaid we being all [or a majority] of the justices then and there sitting and the said E.F. [or G.H.] having then and there appeared before us to defend and oppose the said information and the said A.B. [or C.D.] having failed to appear [or having also appeared but having failed to give proof to our satisfaction] in support of his said information we do therefore adjudge that the said information be dismissed and the same is hereby dismissed accordingly [here add in case costs shall be awarded to the tenant or occupier] And we do assess the costs of the said E.F. [or G.H.] of appearing and defending and opposing the said information at the sum of which said sum of money we do award to the said E.F. [or G.H.] for his

31 VICTORIA No. 27. his said costs And we do order and adjudge that the same shall be paid by the said A.B. [or C.D.] to the said E.F. [or G.H.] And we do further award and adjudge that if the same be not paid forthwith that the same be levied by distress and sale of the goods and chattels of the said A.B. [or C.D.]

Witness our hands and seals the day }
 of in the year of our Lord one { [L.S.] J.P.
 thousand eight hundred and { [L.S.] J.P.

Form of Distress Warrant for Non-payment of Costs.

To a constable [or peace officer of or acting] for the district of
 [or other place as the case may be] in the Colony of and to all other
 constables and peace officers of or acting for the said district [or other place
 as the case may be] and to each of them. [Or To all constables and peace
 officers of or acting for the district of [or other place as the case
 may be] in the Colony of and to each of them.] [Or To
 a person specially named for the purposes hereinafter mentioned.] [Or
 To and persons specially named for the purposes hereinafter
 mentioned and to each of them.]

Whereas on the day of now instant [or last past] at [the place
 where the adjudication took place] in the district of in the Colony of
 Queensland the matter of an information exhibited by A.B. [or C.D. the agent of
 A.B.] against E.F. [or G.H.] under and by virtue of the provisions of the Act of the
 Parliament of the said Colony passed in the thirty-first year of the reign of Her Majesty
 Queen Victoria intituled "*An Act for the speedy recovery of the possession of tene-
 ments unlawfully held over*" was duly heard and adjudicated by [the justices making the
 adjudication] of Her Majesty's justices of the peace in and for the said colony [describing
 the jurisdiction of the justices making the adjudication] and such adjudication was
 in favor of the said A.B. [or C.D. on behalf of the said A.B. [or E.F. or
 G.H.] and in and by such adjudication the said justices did assess the costs of
 the said A.B. [or C.D. or E.F. or G.H.] in the premises at the sum of
 [as in the adjudication] and did award to the said A.B. [or C.D. or E.F. or G.H.]
 the said sum of money for his said costs and did order and adjudge that the same should be
 paid forthwith by the said E.F. [or G.H.] to the said A.B. [or C.D. or by the said A.B. or
 C.D. to the said E.F. or G.H.] and that if the same should not be forthwith paid the same
 should be levied by distress and sale of the goods and chattels of the said E.F. [or G.H.
 or A.B. or C.D.] and in default of sufficient distress that the said E.F. [or G.H. or A.B.
 or C.D.] should be imprisoned in Her Majesty's gaol at in the said Colony for the
 period of unless the said sums and all costs and charges of the said distress and of
 the commitment and conveyance of the said E.F. [or G.H. or A.B. or C.D.] to the said gaol
 should be sooner paid And whereas the said E.F. [or G.H. or A.B. or C.D.] hath not
 paid the said sum of money so ordered and adjudged to be paid by him for the said costs as
 aforesaid but therein hath made default These are therefore to command you in Her
 Majesty's name forthwith to make distress of the goods and chattels of the said E.F. [or
 G.H. or A.B. or C.D.] and if within the period of clear days after the making of
 such distress the said sum of money abovementioned together with the reasonable charges of
 taking and keeping the said distress shall not be paid that then you do sell the said goods
 and chattels so by you distrained and do pay the money arising from such sale unto
 the clerk of petty sessions of the justices of the peace for the said district of in
 order that he may pay and apply the same as by law directed and may render the overplus
 if any on demand to the said E.F. [or G.H. or A.B. or C.D.]

Given under my hand and seal the day }
 of in the year of our Lord one { [L.S.] J.P.
 thousand eight hundred and {

An Act to Consolidate and Amend the Laws 31 VICTORIE No. 23.
relating to Aliens. [28th December, 1867.]

WHEREAS it is expedient to consolidate and amend the laws Preamble.
relating to aliens Be it enacted by the Queen's Most Excellent
Majesty by and with the advice and consent of the Legislative Council
and Legislative Assembly of Queensland in Parliament assembled and by
the authority of the same as follows—

Privileges of Women.

1. Every person now born or hereafter to be born out of Her Persons born of a
Majesty's dominions of a mother being a natural born subject of the British mother.
United Kingdom of Great Britain and Ireland shall be capable of taking 11 Vic. No. 39 s. 1.
to him or her or his or her heirs executors or administrators any estate 11 Pring 5.
real or personal within the colony of Queensland by devise or purchase or
inheritance or succession.

2. Any woman married or who shall be married to a natural born Woman naturalized
subject or person naturalized shall be deemed and taken to be herself by marriage.
naturalized and have all the rights and privileges of a natural born subject 11 Vic. No. 39 s. 14.
within the said colony. 1 Pring 17.

Aliens in General.

3. Every alien being the subject of a friendly state shall and may Alien friends may
take and hold by purchase gift bequest representation or otherwise every hold personalty.
species of personal property except chattels real as fully and effectually to 11 Vic. No. 39 s. 2.
all intents and purposes and with the same rights remedies exemptions 1 Pring 16.
privileges and capacities as if he or she were a natural born subject of the
United Kingdom of Great Britain and Ireland.

4. Every alien now residing in or who shall hereafter come to Alien residents may
reside in any part of the said colony and being the subject of a hold lands for
friendly state may by grant lease demise assignment bequest representation twenty-one years.
or otherwise take and hold any lands houses or other tenements for the 11 Vic. No. 39 s. 3.
purpose of residence or of occupation by him or her or his or her servants 1 Pring 16.
or for the purpose of any business trade or manufacture for any term of
years not exceeding twenty-one years as fully and effectually to all intents
and purposes and with the same rights remedies exemptions and privileges
except the right to vote at the elections of members of the Legislative
Assembly of the said colony as if he were a natural born subject of the
United Kingdom of Great Britain and Ireland.

European and North American Aliens.

5. Any alien being a native of an European or North American Certain aliens taking
state and not being an alien enemy who shall attend before one or more the oath of allegiance
justices of the peace in petty sessions assembled and take and subscribe shall be naturalized.
the oath of allegiance to Her Majesty contained in the schedule to 25 Vic. No. 9 s. 2.
this Act annexed shall thenceforth be a naturalized British subject 1 Pring 18.
within the meaning of the laws now in force and such justice or
justices is or are hereby authorised and required to administer the
said oath.

Asiatic

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Asiatic and African
aliens to be married
and have resided
three years in colony.
25 Vic. No. 9 s. 4.
1 Pring 18.

Memorial for certifi-
cate.

11 Vic. No. 39 s. 5.
1 Pring 16.

Certificates issued.

11 Vic. No. 39 s. 6.
1 Pring 16.

And to be enrolled.

11 Vic. No. 39 s. 7.
1 Pring 16.
27 Vic. No. 14 s. 20.
3 Pring 316.

Oath to be taken.

11 Vic. No. 39 s. 8.
1 Pring 17.

Power of Governor.

11 Vic. No. 39 s. 9.
1 Pring 17.

Right of certified
aliens.

11 Vic. No. 39 ss. 4
and 5. 1 Pring 16.

Copy of the oath to
be recorded.

Asiatic or African Aliens.

6. No Asiatic or African alien shall be entitled to be naturalized as a British subject unless such alien shall be married and shall have resided in the colony for a period of three years. Provided also that the wife of the said alien shall at the time of his being so naturalized reside within the colony.

7. It shall be lawful for any such Asiatic or African alien as aforesaid to present to the Governor of the said colony for the time being a memorial stating the age profession trade or other occupation of the memorialist and the duration and places of his or her residence in Queensland and all other the grounds on which he or she seeks to obtain any of the rights and capacities of a natural born British subject within the said colony and praying the said Governor to grant to the memorialist the certificate hereinafter mentioned.

8. Every such memorial shall be considered by the said Governor who shall inquire into the circumstances of each case and receive all such evidence as shall be offered by affidavit or otherwise as he may deem necessary or proper for proving the truth of the allegations contained in such memorial and the said Governor if he shall so think fit may issue a certificate reciting such of the contents of the memorial as he shall consider to be true and material and granting to the memorialist (upon his or her taking and subscribing the oath of allegiance) all the rights and capacities within the said colony of a natural born British subject except the capacity of being a member of either the Executive or the Legislative Council or the Legislative Assembly and except the rights and capacities (if any) specially excepted in and by such certificate.

9. Such certificate shall be enrolled for safe custody as of record in the Supreme Court of the said colony and may be inspected and copies thereof taken under such regulations as the Chief Justice and one other judge of the said Supreme Court shall direct.

10. Within sixty days from the day of the date of such certificate every memorialist to whom rights and capacities shall be granted by such certificate shall take and subscribe the oath of allegiance to Her Majesty before one or more justices of the peace in petty sessions assembled.

11. The several proceedings hereby authorised to be taken for obtaining such certificate as aforesaid shall be regulated in such manner as the Governor in Council shall from time to time direct.

12. Upon obtaining the certificate and taking and subscribing the oath of allegiance every Asiatic or African alien now residing in or who shall hereafter come to reside in any part of the said colony with intent to settle therein shall enjoy all the rights and capacities within the said colony which a natural born subject of the United Kingdom of Great Britain and Ireland can enjoy or transmit except that such alien shall not be capable of becoming a member of the Executive or Legislative Council or Legislative Assembly of the said colony or of enjoying such other rights and capacities if any as shall be specially excepted in and by the certificate to be granted in manner hereinbefore mentioned.

Record of Oaths &c.

13. A copy of every oath of allegiance taken under this Act signed by the deponent and attested by such justice or justices under

under his or their hand with the date of taking the said oath shall be filed in the office of the registrar of the Supreme Court and a record thereof which shall be a record of the court shall be entered in a book to be kept for that purpose in the said office. Provided that in the said book shall also be entered the place of birth age profession trade or other occupation and then residence of the person so naturalized.

Fees.

14. The fees mentioned in the following schedule and no other shall be payable (under this Act) in respect of the oath of allegiance—

SCHEDULE					s.	d.
Oath of allegiance	...	...	...	...	1	0
Filing same	...	...	...	...	1	0
Copy of the record thereof under the seal of the Supreme Court office and hand of the registrar	...	...	...	...	2	6

Fees.
25 Vic. No. 9 s. 6.
1 Pring 18.
25 Vic. No. 9.
1 Pring 18 and 19.

General Provisions.

15. All persons who shall have been naturalized or who shall have obtained under due authority letters of denization before the passing of this Act and who shall have resided in the said colony during five successive years shall be deemed entitled to and shall enjoy all such rights and capacities of British subjects within the said colony as may be conferred on aliens by the provisions of this Act.

Five years' residence.
11 Vic. No. 39 s. 11.
1 Pring 17.

16. Provided always that nothing in this Act shall prejudice or be construed to prejudice any rights or interests in law or in equity whether vested or contingent under any will deed or settlement executed by any natural born subject of Great Britain or Ireland before the passing of this Act or under any descent or representation from or under any such natural born subject who shall have died before the passing of this Act.

Existing rights.
11 Vic. No. 39 s. 12.
1 Pring 17.

17. Nothing herein contained shall be construed so as to take away or diminish any right privilege or capacity heretofore lawfully possessed by or belonging to aliens residing in the said colony so far as relates to the possession or enjoyment of any real or personal property but all such rights shall continue to be enjoyed by such aliens in as full and ample a manner as such rights were enjoyed before the passing of this Act.

Saving rights of aliens.
11 Vic. No. 39 s. 13.
1 Pring 17.

18. Provided always That all laws and statutes of England affecting aliens so far as the same may be inconsistent with the provisions of this Act shall be deemed taken and adjudged not to extend to the said colony or to be in force within the same.

English laws how far applicable.
11 Vic. No. 39 s. 15.
1 Pring 18.

Commencement and Short Title.

19. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Aliens Act of 1867.*"

Commencement of Act.

Short title.

SCHEDULE.

I [A. B.] do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria as lawful Sovereign of the United Kingdom of Great Britain and Ireland and of the Colony of Queensland dependent and belonging to the said United Kingdom and that I will defend Her to the utmost of my power against all traitorous conspiracies and attempts whatsoever which shall be made against Her person Crown and dignity and that I will do my utmost endeavor to make known to Her Majesty Her heirs and successors all treasons and traitorous conspiracies and attempts which I shall know to be against Her or any of them So help me God !

31 VICTORIA No. 33. **An Act to Consolidate and Amend the Laws relating to Medical Practitioners Chemists and Druggists.** [28th December, 1867.]

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to medical practitioners chemists and druggists Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

The Queensland Medical Board.

Governor to appoint a Medical Board and remove any or all the members thereof whenever he may think fit.

2 Vic. No. 22 s. 2.
2 Pring 1001.

Persons desirous of being declared qualified medical practitioners to submit their diplomas or other certificates for approval of the Board.

1. It shall and may be lawful for the Governor in Council to appoint a committee consisting of not less than three persons being legally qualified members of the medical profession one of whom shall be nominated president together with a secretary under the style and description of "The Queensland Medical Board" and it shall be lawful for the said Governor in Council to remove the said members or any of them and upon the removal death or resignation of the said members or any of them to appoint such other or others as he shall think fit and any person desirous of being declared a legally qualified medical practitioner shall submit his degree diploma or other certificate or proof of his being so duly qualified for the examination and approval of the said Medical Board and on approval shall obtain from the said Medical Board a certificate of his being so qualified.

What shall be deemed a quorum of the Medical Board.
19 Vic. No. 17 s. 2.
2 Pring 1003.

2. A quorum of the board under this Act shall consist of not less than three members thereof and in case of the absence of the president of the said board it shall be competent for any other member to preside for the time being and the present board shall be deemed to be duly constituted under this Act.

Medical Board to register practitioners chemists and druggists.
25 Vic. No. 5 s. 1.
2 Pring 997.

3. The Medical Board of Queensland shall be the board for registering the different medical practitioners chemists and druggists under this Act subject to such alteration as the Governor in Council may at any time determine.

Medical Practitioners.

Medical practitioners properly qualified shall be deemed legally qualified medical practitioners.

2 Vic. No. 22 s. 1.
2 Pring 1000.
9 Vic. No. 12 s. 1.
2 Pring 1003.

4. Any person who shall prove to the satisfaction of the Queensland Medical Board or a quorum thereof that he has passed through a regular course of medical study of not less than three years duration in a school or schools of medicine and that he has received after due examination from some university college or other body duly recognised for that purpose in the country to which such university college or other body may belong a diploma degree or license entitling him to practise medicine in that country or who is or has been a medical officer duly appointed and confirmed of Her Majesty's sea or land service shall be deemed to be a legally qualified medical practitioner within the meaning of this Act and shall be entitled to registration and to a certificate as such from the said board.

19 Vic. No. 17 s. 1.
2 Pring 1003.

Meaning of words "medical practitioner."

5. A person entitled to practice medicine shall for the purpose of interpreting the section last preceding of this Act be held to mean any physician

physician doctor of medicine bachelor of medicine licentiate in medicine and surgery surgeon general practitioner or apothecary who has obtained a diploma degree or license in the manner and of the character therein described.

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25 Vic. No. 5 s. 9.
2 Pring 998.

6. Nothing herein contained shall be taken or construed to prevent or restrain any person registered under the Imperial Act "To regulate the Qualifications of Practitioners in Medicine and Surgery" from practising according to his qualification or qualifications in medicine or surgery or medicine and surgery as the case may be in any part of the colony of Queensland or from demanding and recovering in any court of law in the said colony with full costs of suit reasonable charges for professional aid advice and visits and the costs of any medicines or other medical or surgical appliances rendered or supplied by him to his patients or be construed to affect the privileges of any persons so registered. Provided that gentlemen registered under the said Imperial Medical Act who wish to practise in this colony shall present to the Queensland Medical Board a certificate of such registry or send to said board such certificate authenticated by a declaration made before some magistrate for the colony in whose petty sessions district such practitioner may reside which declaration shall state that said declarant is duly qualified and is the person mentioned in the certificate thereto annexed. Provided that any person making a false declaration shall be deemed guilty of perjury.

Persons registered under the Imperial Act may practise in the colony.
25 Vic. No. 4 s. 1.
2 Pring 998.

Chemists and Druggists.

7. No chemist and druggist shall obtain a certificate from the Medical Board of this colony except upon the production of testimonials satisfactory to such board and stating that he has been engaged for a period not less than three years in learning pharmacy and chemical affinities and that he is qualified to compound and dispense medicine. Provided that this Act shall not be construed so as to prevent any person from selling un compounded drugs or patent medicines.

Chemists and druggists to present testimonials to the Medical Board.
25 Vic. No. 5 s. 2.
2 Pring 997.

Register.

8. The said Medical Board shall cause the names of all "legally qualified medical practitioners" as aforesaid to be registered in a book to be kept by the said board for that purpose and shall also cause all the names so registered to be published in the *Government Gazette* on or about the first day of January and the same to be repeated annually for the information of coroners magistrates and the public. The said board shall on or about the first day of January in every year publish in the *Government Gazette* a list of all registered medical practitioners chemists and druggists residing in this colony signed by the president and secretary of the said board and a copy of the *Government Gazette* shall be evidence in all courts and before all justices of the peace that the persons therein specified are registered according to the provisions of this Act and the absence of the name of any person from such copy shall be taken as evidence to the contrary unless he shall produce his certificate from the board or a certified letter from the secretary that he is registered according to the provisions of this Act but nothing in this Act contained shall extend or be construed to extend to prejudice or in any way affect the lawful occupation or business of dentists.

Names of all legally qualified medical practitioners &c. to be entered in a book and names so registered to be published in the *Gazette*.
2 Vic. No. 22 s. 3.
2 Pring 1001.
List of registered persons to be published in the *Gazette*.
25 Vic. No. 5 s. 1.
2 Pring 997.

Dentists not to be affected.

Registered

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Persons registered
entitled to practise
and recover charges.
25 Vic. No. 5 s. 3.
2 Pring 997.

Proof of registration
required to enable
persons to recover
charges.
25 Vic. No. 5 s. 4.
2 Pring 997.

No certificate valid
unless signed by a
person registered.
25 Vic. No. 5 s. 5.
2 Pring 997.

Coroner or justice
may summon any
qualified medical
witnesses.
1 Vic. No. 3 s. 1.
2 Pring 999.
2 Vic. No. 22 s. 1.
2 Pring 1000.

Deceased having been
attended before or at
the time of death
coroner or justice to
summon the party
who gave such attend-
ance.

Coroner or justices
may order a *post*
mortem examination.
1 Vic. No. 3 s. 2.
2 Pring 999.

Increase of death
by improper or
negligent treatment of
medical practitioner
he shall not be al-
lowed to assist at any
such examination.

Additional medical
evidence in cases
where the cause of

Registered Persons.

9. Every person registered under this Act shall be entitled according to his qualification or qualifications to practise medicine or surgery or medicine and surgery or to compound and dispense medicine in any part of this colony and to demand and recover in any court of law with full costs of suit reasonable charges for professional advice aid and visits and the costs of any medicine or other medical or surgical appliances supplied by him to his patients or customers.

10. No person shall be entitled to recover any charge in any court of law for any medical or surgical advice attendance or the performance of any operation or for medicine compounded and sold unless he shall prove that he is registered under this Act and any person being so registered as aforesaid who shall practise profess to practise or act under any qualification other than that for which he has been registered shall not be entitled to recover any charge made by him in respect thereof and no person registered as a chemist and druggist only shall recover any charge as a medical practitioner.

11. No certificate required by any Act now in force or that may hereafter be passed from any medical practitioner shall be valid unless the person signing the same be registered under this Act or some former Act made in the like behalf.

Medical Witnesses.

12. Whenever upon the summoning or holding of any coroner's inquest or upon the holding of any inquiry by a justice or justices of the peace touching the death of any person it shall appear to the coroner justice or justices (as the case may be) that the deceased person was not at or immediately before his death attended by any legally qualified medical practitioner it shall be lawful for such coroner justice or justices to issue a summons for the attendance as a witness at such inquest or inquiry of some legally qualified medical practitioner in actual practice who shall reside near to the place where such inquest or inquiry is holden but where the deceased person was attended by any such practitioner the coroner justice or justices shall issue a summons for his attendance only or if the deceased was attended by more than one such practitioner the coroner justice or justices may cause all or any of them to be summoned at his or their discretion.

13. It shall be lawful for the coroner justice or justices either in such summons as aforesaid or by an order in writing at any time before the termination of the inquest or inquiry to direct any legally qualified medical practitioner to perform a *post mortem* examination of the body of the deceased either with or without an analysis of the contents of the stomach or intestines. Provided that if in any case it appear to the coroner justice or justices (as the case may be) that the death of such deceased person was probably caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person then such practitioner or other person shall not be allowed to perform or assist at any such examination or analysis although he shall in every such case be allowed to be present thereat.

14. Whenever it shall appear to the coroner or to a majority of the jury at any such inquest or to the justice or justices or a majority of them at any such inquiry that the cause of death has not been satisfactorily explained

explained by the practitioner or practitioners examined in the first instance at such inquest or inquiry the coroner justice or justices shall forthwith cause any other legally qualified practitioner or practitioners to be summoned as a witness or witnesses at such inquest or inquiry and shall direct him or them to perform a *post mortem* examination with or without such analysis as aforesaid whether such an examination shall have been previously performed or not. Provided that where such additional evidence is at the instance of a majority of the jury it shall be lawful for such majority to name to the coroner any particular practitioner or practitioners whom they wish to attend and in that case such practitioner or practitioners shall be summoned and no other.

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death is not satisfactorily explained by first examination.
1 Vic. No. 3 s. 3.
2 Pring 999.

Majority of jury naming any particular party that party only shall be summoned.

15. When any legally qualified medical practitioner has attended at an inquest or inquiry in obedience to any such summons as aforesaid he shall for such attendance and for giving evidence at such inquest or inquiry be entitled to receive the remuneration of one guinea and (in addition thereto) for the making of any such *post mortem* examination the remuneration of two guineas and if the place of his residence shall be more than two miles distant from the place where the inquest or inquiry is holden then such practitioner shall be entitled to a sum of one shilling each way for every mile of such extra distance in addition. Provided that no remuneration shall be paid for the performance of any *post mortem* examination instituted without the previous direction of the coroner justice or justices (as the case may be). Provided also that where the death shall have happened in any public hospital gaol or other public building no medical officer appointed with salary to attend such hospital gaol or building shall be entitled to any such remuneration.

Remuneration to medical witnesses.

For evidence one guinea.
1 Vic. No. 3 s. 4.
2 Pring 1000.

Post mortem examination two guineas.

One shilling for every mile beyond ten.

No remuneration for unauthorised examination.

Death happening in public buildings medical officer attending not entitled to remuneration.

16. Where any such summons or order of any coroner justice or justices as aforesaid shall have been served upon any medical practitioner to whom the same was directed or shall have been left at his usual residence in sufficient time for him to obey the same and he shall nevertheless not obey such summons or order he shall for such neglect forfeit and pay a penalty or sum of not less than three pounds nor more than twenty to be recovered in a summary way before any two justices of the peace unless he shall at the hearing of the case show a good and sufficient excuse for such neglect to the satisfaction of such justices and every proceeding under this section shall be had before such justices and the party convicted be entitled to appeal.

Medical witnesses neglecting to attend to forfeit and pay not less than three nor more than twenty pounds.
1 Vic. No. 3 s. 5.
2 Pring 1000.

Proceedings &c. under this section to be summary.

Powers and Penalties.

17. It shall be lawful for the said board (or a quorum thereof) to examine any person who may present himself for examination or any witness who may be produced before them and to take a solemn declaration from such person or witness and if any person shall wilfully knowingly and corruptly make any false statement upon such examination or in such declaration or shall utter or attempt to utter or put off as true before the said board (or a quorum thereof) any false forged or counterfeit diploma degree license certificate or other document or writing such person shall be guilty of a misdemeanor and being thereof duly convicted shall be liable to imprisonment with or without hard labor for any period not exceeding three years.

Persons forging or obtaining a certificate under false representations liable to imprisonment with or without hard labor.
19 Vic. No. 17 s. 3.
2 Pring 1003.

18. If any person fraudulently or by false representations obtains any certificate as a duly qualified medical practitioner under the provisions

Persons forging or obtaining a certificate

31 VICTORIÆ No. 33. of this Act or shall forge alter or counterfeit any such certificate or shall utter or use any such forged certificate knowing the same respectively to have been forged or shall falsely advertise or publish himself as having obtained such certificate every person guilty of any or either of the said offences shall be deemed guilty of a misdemeanor and being thereof duly convicted shall be liable to imprisonment with or without hard labor for any period not exceeding three years.

Fraudulent registration punishable by imprisonment.
25 Vic. No. 17 s. 4.
2 Pring 1003.

19. If any person shall wilfully procure or attempt to procure himself to be registered under this Act by making or producing or causing to be made or produced any false or fraudulent representation or declaration either verbally or in writing every person so offending and every person aiding and assisting him therein shall be guilty of a misdemeanor and shall on conviction be sentenced to be imprisoned for any term not exceeding twelve months.

Unregistered practitioner chemist and druggist subject to a penalty of twenty pounds.
25 Vic. No. 5 s. 7.
2 Pring 998.

20. Any person who shall wilfully and falsely pretend that he has been and is duly registered under the provisions of this Act as a medical practitioner or chemist and druggist or who shall represent himself to be a medical practitioner or chemist or druggist or use any title or term which may be construed to mean that he is qualified to perform the duties of either and at the same time practise or compound and dispense medicine without being registered or who being registered as aforesaid shall practise profess to practise or act in any manner contrary to his registered qualification or qualifications shall upon conviction before two or more justices of the peace of every such offence pay a sum not exceeding twenty pounds.

Colonial Treasurer to receive penalties.
25 Vic. No. 5 s. 8.
2 Pring p. 998.

21. Any sum or sums of money arising from conviction and recovery of penalties as aforesaid shall be paid to the Colonial Treasurer for the general uses of this colony.

Commencement and Short Title.

Commencement of Act.
Short title.

22. This Act shall commence on the thirty-first day of December one thousand eight hundred and sixty-seven and may be referred to as the "*Medical Act of 1867.*"

An Act to Repeal certain Enactments which have been consolidated in Twenty-nine several Acts of the present Session.

[28th December, 1867.]

WHEREAS by twenty-nine several Acts of the present session of Parliament intituled respectively as next hereunder mentioned—

- An Act for Shortening Acts of the Legislature.
- An Act to Consolidate the Laws relating to the Constitution of the Colony of Queensland.
- An Act to Consolidate certain Laws relating to the Legislative Assembly.
- An Act to Consolidate the Laws relating to the Number of Members of the Legislative Assembly and to the Electoral Districts whereby such Members are returned.
- An Act to Consolidate the Laws relating to Parliamentary Elections.
- An Act to Consolidate and Amend the Laws relating to the Supreme Court.
- An Act to Consolidate and Amend the Laws relating to Mesne Process and Process of Execution and to the Remedies of Plaintiffs in Actions at Common Law.
- An Act to Consolidate and Amend the Laws relating to Practice at Common Law.
- An Act to Consolidate and Amend the Laws relating to the Joinder of Causes of Action and of Parties to Actions and to the Revivor of Actions at Common Law.
- An Act to Consolidate and Amend the Laws relating to Pleading in Actions at Law.
- An Act to Consolidate and Amend the Laws relating to Frauds and the Limitation of Actions.
- An Act to Consolidate and Amend the Law of Evidence and Discovery at Common Law.
- An Act to Consolidate and Amend the Laws relating to Jurors and Juries.
- An Act to Consolidate and Amend the Laws relating to Oaths.
- An Act to Consolidate and Amend the Laws relating to Mercantile Matters.
- An Act to Consolidate and Amend the Laws relating to Bills of Exchange Promissory Notes and Cheques.
- An Act to Consolidate and Amend the Laws relating to Distress Replevin and Ejectment.
- An Act to Consolidate and Amend the Laws relating to Dower Inheritance Succession Wills Powers Uses and Remedies against Realty.
- An Act to Consolidate and Amend the Laws relating to Probate.
- An Act to Consolidate and Amend the Laws relating to the Curator of Intestate Estates.
- An Act to Consolidate and Amend the Laws relating to Arbitration Interpleader Mandamus Quo Warranto Prohibition and Injunction.
- An Act to Consolidate and Amend the Laws relating to Proceedings in Equity.
- An Act to Consolidate and Amend the Laws relating to Trustees Mortgagees Purchasers and Incapacitated Persons.
- An Act to Consolidate and Amend the Laws relating to Costs at Common Law and to Taxation in General.
- An Act to Consolidate and Amend the Laws relating to District Courts.
- An Act to Consolidate and Amend the Laws relating to Small Debts Courts.
- An Act for the Speedy Recovery of Tenements Unlawfully Held Over.
- An Act to Consolidate and Amend the Laws relating to Aliens.
- An Act to Consolidate and Amend the Laws relating to Medical Practitioners Chemists and Druggists.

divers Acts and parts of Acts have been consolidated or amended or consolidated and amended and it is expedient to repeal the enactments so consolidated or amended or consolidated and amended Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled and by the authority of the same as follows—

Interpretation.

31 VICTORIA No. 39.

Interpretation.

Interpretation.

1. The words "said Acts and parts of Acts" in this Act used in reference to the Acts or parts of Acts in the schedule hereto annexed may mean the said Acts or parts of Acts or any or either of them or any part or subdivision thereof unless some other meaning appear or be implied.

Repeal.

Repeal and limitation thereof.

24 & 25 Vic. c. 95 s. 1.

29 Vic. No. 14 s. 1.

2. The several Acts and parts of Acts in the schedule hereto shall continue in force until and throughout the thirtieth day of December in the present year and until the commencement of the twenty-nine Acts hereinbefore enumerated or mentioned and described and shall from and after that day or time be repealed to the extent specified in the third column of the said schedule except as to any operation already effected by or act done under any enactment therein comprised or as to any right title obligation or liability already acquired or accrued under any such enactment.

24 & 25 Vic. c. 101 s. 1.

The Order in Council.

Preamble.

Power to alter constitution.
Order in Council
s. 22.
1 Pring 242.

3. And whereas by an Order in Council empowering the Government of Queensland to make laws and to provide for the administration of justice in the said colony dated at the Court at Buckingham Palace the sixth day of June one thousand eight hundred and fifty-nine it was declared and ordered by the Queen's Most Excellent Majesty in Council that the Legislature of the Colony of Queensland should have full power and authority from time to time to make laws altering or repealing all or any of the provisions of the said Order in Council in the same manner as any other laws for the good government of the colony except so much of the same as incorporates the enactments of the fourteenth year of Her Majesty chapter fifty-nine and of the sixth year of Her Majesty chapter seventy-six relating to the giving and withholding of Her Majesty's assent to Bills and the reservation of Bills for the signification of Her Majesty's pleasure and the instructions to be conveyed to Governors for their guidance in relation to the matters aforesaid and the disallowance of Bills by Her Majesty Provided that every Bill by which any alteration should be made in the constitution of the Legislative Council so as to render the whole or any portion thereof elective should be reserved for the signification of Her Majesty's pleasure thereon and a copy of such Bill should be laid before both Houses of the Imperial Parliament for the period of thirty days at least before Her Majesty's pleasure thereon should be signified Now therefore be it enacted that the said Order in Council shall continue in force until and throughout the thirtieth day of December in the present year and until the commencement of the twenty-nine Acts hereinbefore enumerated or mentioned and described and shall from and after that day or time be repealed except so far as in the said Order in Council is excepted and provided and except as to any operation already effected by or act done under any order or provision therein comprised or as to any right title obligation or liability already acquired or accrued under any such order or provision.

Sir

Sir W. T. Denison's Proclamation.

31 VICTORIA No. 39.

4. The proclamation of his Excellency Sir William Thomas Denison of the twentieth day of December in the year of our Lord one thousand eight hundred and fifty-nine is hereby repealed or annulled except as to any operation already effected by or act done under any declaration provision or order therein comprised or as to any right title obligation or liability already acquired or accrued under any such declaration provision or order.

Sir W. T. Denison's
proclamation.
1 Pring 243.

Provisions.

5. Provided that every offence which shall have been wholly or partly committed against any of the said Acts or parts of Acts in the said schedule mentioned before this Act comes into operation shall be dealt with inquired of tried determined and punished and every penalty in respect of any such offence shall be recovered in the same manner as if the said Acts and parts of Acts had not been repealed and that every act duly done and every warrant and other instrument duly made or granted before this Act comes into operation shall continue and be of the same force and effect as if the said Acts and parts of Acts had not been repealed and that every right liability privilege and protection in respect of any matter or thing committed or done before this Act comes into operation shall continue and be of the same force and effect as if the said Acts and parts of Acts had not been repealed and that every action prosecution and other proceeding civil or criminal which shall have been commenced before this Act comes into operation or shall thereafter be commenced in respect of any such matter or thing may be prosecuted continued and defended heard and determined or otherwise disposed of in the same manner as if the said Acts and parts of Acts had not been repealed and where any instrument whatever made under or in virtue of the said Acts and parts of Acts shall require registration but shall not be registered at the commencement of this Act such instrument may be registered in the same manner as if the said Acts and parts of Acts had not been repealed.

Repeal not to affect
offences &c. com-
mitted before the
commencement of
this Act.
24 & 25 Vic. c. 95 s. 3.
29 Vic. No. 14 s. 2.

6. Provided also that nothing herein contained shall in any manner alter or affect any power or authority given by any Act to alter or amend any register of births baptisms marriages deaths or burials.

Registers of birth &c.
24 & 25 Vic. c. 95 s. 4.
29 Vic. No. 14 s. 3.

7. Provided also that nothing in this Act or the said twenty-nine Acts shall be taken in anywise to invalidate or affect the interpretation of any will contract instrument security or document the subject matter of the said Acts or parts of Acts in the schedule hereto made or given or in existence or agreed or contracted to be made or given before the commencement of this Act or shall be construed or taken in anywise to affect the registration thereof effected before or after the commencement of this Act and any such registration shall be deemed to have the same effect as if the said Acts and parts of Acts had not been repealed and nothing herein or in the said twenty-nine Acts contained shall be construed in anywise to affect any contract or agreement lien pledge or other matter or thing the subject matter

Saving of rights &c.

31 VICTORIA No. 39. matter of the said Acts and parts of Acts in the schedule hereto made or done before the commencement of this Act and all conveyances bills of exchange promissory notes bankers drafts bills of lading policies bonds guarantees bills of sale mortgages of stock liens on wool and crops warrants of attorney and *cognovits actionem* powers of attorney instruments and other documents and all registrations of bills of sale mortgages of stock liens on wool and crops warrants of attorney and *cognovits actionem* and powers of attorney securities conveyances or other documents the subject matter of the said Acts and parts of Acts in existence or effected before the commencement of this Act and all contracts agreements liens pledges or other matter or thing the subject matter of the said Acts and parts of Acts made entered into or done before the commencement of this Act shall have and be of the same force and effect and continue to have and be of the same force and effect to all intents and purposes whatsoever as the same would respectively have had or continue to have had if the said Acts and parts of Acts had not been repealed and the commencement of this Act shall not affect injuriously the office salary privileges or pension or any right title interest claim or cause of action in respect thereof of any judge of the Supreme Court or any pension or privilege whatever or any right title interest claim or cause of action in respect thereof accruing under the said Acts and parts of Acts or any conviction judgment sentence decree order or warrant or any writ or proceeding under any of the said last-mentioned Acts and parts of Acts or under any proclamation therein mentioned or referred to or the authority of any Legislature constituted or the seat of any member of Parliament appointed or elected under the said Acts and parts of Acts or the authority of the present medical board or the right of any barrister solicitor attorney or proctor to practise in the Supreme Court and whenever by the commencement of this Act any office shall be abolished or affected but the duties thereof shall be necessary to be performed such duties shall if no other provision be made in that behalf be performed by the officer filling the office substituted for the abolished or affected office And when it shall be or have been necessary to register any instrument or document whatever made under or in virtue of the said Acts and parts of Acts it shall be necessary in like manner to register the like instruments or documents made after the commencement of this Act and as nearly as may be in the same manner as before and whether such instruments or documents shall have been made or come into existence under or in virtue of the said Acts and parts of Acts in the schedule hereto or the said twenty-nine Acts and where any Act or any general rule or order of the Supreme Court refers to the said Acts and parts of Acts such Act rule or order shall apply to the same extent to any Act of this present session (being one of the said twenty-nine Acts) enacted in substitution for the same And any rule usage custom or practice in the Supreme Court or in any inferior court or office in respect of the said Acts and parts of Acts shall continue in respect of the Acts substituted for the same and the commencement of this Act shall not take away

or

or diminish any jurisdiction or power at common law or by custom of the Supreme Court or the ecclesiastical jurisdiction or power thereof and the commencement of this Act and of the said twenty-nine Acts shall not affect any right title estate claim interest or cause of action accruing under the will of any testator who shall have died before the first day of January one thousand eight hundred and thirty-seven or accruing under any assurance executed before the said last-mentioned day nor the validity or effect of any appointment in exercise of any power or authority to appoint real or personal property made or of any will or codicil of a testator deceased before the commencement and taking effect of the Act of Council five William the Fourth number eight and generally whenever by the said twenty-nine Acts or any or either of them or any part thereof an interpretation or effect is given to any Acts of Parliament or other documents whatever which interpretation or effect is in and by the said Acts and parts of Acts in the schedule hereto limited to such Acts or documents as were passed or made before a certain day time or event or under certain circumstances such interpretation shall not be given to any Act or document passed or made before such day time or event or not under such circumstances And the interpretation of every Act made before the close of the present session shall be the same as if this and the said twenty-nine Acts had not been passed and the said Acts and parts of Acts had not been repealed and the *Acts Shortening Act of 1867* shall not apply to any Act made or passed before the end of this present session of Parliament save in so far as the same agrees with the enactments to the like effect contained in the said Acts and parts of Acts in the schedule hereto and all general rules and orders of the Supreme Court shall have the same force and effect as the same shall have had before the commencement of this Act but subject to repeal or variation according to any power or authority given by this Act or the said twenty-nine Acts or any or either of them or any part thereof.

31 VICTORIA No. 32.
3 & 4 Wm. IV. c. 106
s. 3 and 4.
2 Pring 1195.
7 Wm. IV. No. 8
s. 2.
2 Pring 1192.
1 Pring 474.
11 Geo. IV. & 1 Wm.
IV. c. 46.
2 Pring 1671.

The Real Property Registration and Insolvency Acts.

6. The commencement of this Act and of the said twenty-nine Acts shall not affect the *Real Property Act of 1861* or any Registration or Insolvency Act or their interpretation and where necessary to prevent their being so affected the said Acts in this section mentioned may be interpreted as if the same had passed or commenced after the commencement of this Act and of the said twenty-nine Acts and nothing in this Act or the said twenty-nine Acts shall be construed to exclude any evidence which is now admissible under the Acts relating to insolvents.

This Act not to affect the *Real Property Act of 1861* or any Registration or Insolvency Act.

Commencement and Short Title.

9. This Act shall commence at the same time as the said twenty-nine Acts and may be referred to as the "*Repealing Act of 1867.*"

Short Title.

THE SCHEDULE.

References to Acts.	Title of Act.	Extent of Repeal.
7 Geo. IV. No. 3	"An Act to repeal an Act intituled 'An Act to make promissory notes and bills of exchange payable in Spanish dollars available as if such notes and bills had been drawn payable in sterling money of the realm' and to promote the circulation of sterling money of Great Britain in New South Wales"	Sections four and five (4 and 5).
9 Geo. IV. c. 14	"An Act for rendering a written memorandum necessary to the validity of certain promises and engagements"	The whole.
11 Geo. IV. & 1 Wm. IV. c. 36	"An Act for altering and amending the law regarding commitments by Courts of Equity for contempts and the taking bills <i>pro confesso</i> "	The whole.
11 Geo. IV. & 1 Wm. IV. c. 40	"An Act for making better provision for the disposal of the undisposed of residues of the effects of testators"	The whole.
11 Geo. IV. & 1 Wm. IV. c. 46	"An Act to alter and amend the law relating to illusory appointments"	The whole.
11 Geo. IV. & 1 Wm. IV. c. 47	"An Act for consolidating and amending the laws for facilitating the payment of debts out of real estate"	The whole.
11 Geo. IV. & 1 Wm. IV. c. 60	"An Act for amending the laws respecting conveyances and transfers of estates and funds vested in trustees and mortgagees and for enabling courts of equity to give effect to their decrees and orders in certain cases"	The whole.
11 Geo. IV. & 1 Wm. IV. c. 65	"An Act for consolidating and amending the laws relating to property belonging to infants <i>femmes covert</i> idiots lunatics and persons of unsound mind"	The whole.
1 Wm. IV. c. 21	"An Act to improve the proceedings in prohibition and on writs of <i>mandamus</i> "	The whole.
1 Wm. IV. c. 22	"An Act to enable courts of law to order the examination of witnesses upon interrogatories and otherwise"	The whole except sections one and two (1 and 2).
1 & 2 Wm. IV. c. 58	"An Act to enable courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims"	The whole.
3 & 4 Wm. IV. c. 27	"An Act for the limitation of actions and suits relating to real property and for simplifying the remedies for trying the rights thereto"	The whole.
3 & 4 Wm. IV. c. 49	"An Act to allow Quakers and Moravians to make affirmation in all cases where an oath is or shall be required"	The whole.
3 & 4 Wm. IV. c. 105	"An Act for the amendment of the law relating to dower"	The whole.
3 & 4 Wm. IV. c. 106	"An Act for the amendment of the law of inheritance"	The whole.
4 Wm. IV. No. 17	"An Act for adopting and applying a certain Act of Parliament for rendering a written memorandum necessary to the validity of certain promises and engagements"	The whole.
5 Wm. IV. No. 8	"An Act for adopting and applying certain Acts of Parliament passed in the eleventh year of the reign of his late Majesty and first year of the reign of his present Majesty and in the first and	The whole.

References to Acts.	Title of Act.	Extent of Repeal.
5 & 6 Wm. IV. c. 62	second years of the reign of His present Majesty respectively in the administration of justice in New South Wales in like manner as other laws of England are applied therein" "An Act to repeal an Act of the present session of Parliament intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State and to substitute declarations in lieu thereof and for the more entire suppression of voluntary and extra-judicial oaths and affidavits' and to make other provisions for the abolition of unnecessary oaths"	The whole.
7 Wm. IV. No. 8	"An Act for adopting certain Acts of Parliament passed in the third and fourth years of the reign of his present Majesty King William the Fourth in the administration of justice in New South Wales in like manner as other laws of England are applied therein"	The whole.
7 Wm. IV. & 1 Vic. c. 26.	"An Act for the amendment of the laws with respect to wills"	The whole.
8 Wm. IV. No. 2	"An Act for adopting certain Acts of Parliament passed in the third and fourth years of the reign of his present Majesty King William the Fourth and the fourth and fifth years of the reign of his said Majesty and the sixth and seventh years of the reign of his said Majesty respectively and applying the same in the administration of justice in New South Wales in like manner as other laws of England are applied therein"	The whole.
8 Wm. IV. No. 3	"An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign of his present Majesty King William the Fourth and applying the same in the administration of justice in New South Wales in like manner as other laws of England are applied therein"	The whole.
1 Vic. c. 28	"An Act to amend an Act of the third and fourth years of his late Majesty for the limitation of actions and suits relating to real property and for simplifying the remedies for trying the rights thereto"	The whole.
1 Vic. No. 3	"An Act to provide for the attendance of medical witnesses at coroners' inquests and inquiries held by justices of the peace"	The whole.
1 Vic. No. 4	"An Act for the investment of moneys belonging to intestate estates by the Supreme Court in the New South Wales Savings Bank at Sydney"	The whole.
2 Vic. No. 22	"An Act to define the qualifications of medical witnesses at coroners' inquests and inquiries held before justices of the peace in the colony of New South Wales"	The whole.
3 Vic. No. 4.	"An Act to render references to arbitration more effectual"	The whole.
3 Vic. No. 5	"An Act for adopting a certain Act of Parliament intituled 'An Act for the amendment of the laws with respect to wills' in the administration of justice in New South Wales in like manner as other laws of England are applied therein"	The whole.

31 VICTORIAE No. 39.

References to Acts.	Title of Act.	Extent of Repeal.
3 Vic. No. 15	"An Act for abolishing arrest on mesne process in civil actions except in certain cases in New South Wales and the dependencies thereof"	The whole.
3 Vic. No. 18	"An Act for extending the remedies of creditors against the property of debtors in New South Wales and the dependencies thereof"	The whole.
4 Vic. No. 6	"An Act to consolidate and amend the laws relating to actions against persons absent from the colony and against persons sued as joint contractors"	The whole.
4 Vic. No. 28	"An Act to provide for the trial by jury in civil and criminal cases in the circuit and other courts to be holden within the Colony of New South Wales and its dependencies"	The whole.
5 Vic. No. 4	"An Act to make further provision for the trial of cases in the circuit courts of New South Wales and to amend in certain respects the Act providing for trial by jury in such courts"	The whole.
7 Vic. No. 16	"An Act to consolidate and amend the laws relating to the registration of deeds and other instruments in that part of the Colony of New South Wales not comprehending the district of Port Phillip"	Section twenty-one (21.)
8 Vic. No. 1	"An Act for improving the law of evidence"	The whole.
8 Vic. No. 8	"An Act to amend the Act passed in the second year of the reign of her present Majesty Queen Victoria intituled 'An Act to define the qualifications of medical witnesses at coroners' inquests and inquiries held before justices of the peace in the Colony of New South Wales'"	The whole.
9 Vic. No. 9	"An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the Government of New South Wales and to substitute declarations in lieu thereof and for the suppression of voluntary and extra-judicial oaths and affidavits"	The whole.
9 Vic. No. 12	"An Act to amend an Act to define the qualifications of medical witnesses at coroners' inquests and inquiries held before justices of the peace in the Colony of New South Wales"	The whole.
10 Vic. No. 7	"An Act to simplify the law abolishing imprisonment for debt"	The whole.
10 Vic. No. 10	"An Act to amend the law respecting the recovery of small debts in all parts of the colony"	The whole.
1 Vic. No. 13	"An Act to amend the law respecting defamatory words and libel"	Sections three and six (3 and 6).
11 Vic. No. 20	"An Act to consolidate and amend the laws relative to jurors and juries in New South Wales"	The whole.
11 Vic. No. 22	"An Act to amend the law relative to the security to be given on appeals from the decrees and orders of the primary judge in equity to the three judges of the Supreme Court of New South Wales"	The whole.
11 Vic. No. 24	"An Act for the better preservation and management of the estates of deceased persons in certain cases"	The whole.
11 Vic. No. 27	"An Act to render valid the acts and appointments of parties as guardians of the persons and estates of infants and as committees of the persons	The whole.

References to Acts.	Title of Act.	Extent of Repeal.	31 VICTORIA No. 39.
	and estates of lunatics under orders made by the primary judge in equity and to authorise the making of orders in cases of infancy by the said primary judge in future"		
11 Vic. No. 32	"An Act for compensating the families of persons killed by accidents"	The whole.	
11 Vic. No. 32	"An Act to regulate the taxation of attorneys' bills of costs and the practice of conveyancing"	The whole.	
11 Vic. No. 38	"An Act to facilitate the proof of letters patent or deeds of grant from the Crown"	The whole.	
11 Vic. No. 39	"An Act to amend the laws relating to aliens within the Colony of New South Wales"	The whole.	
12 Vic. No. 1.	"An Act to simplify and alter the law in some respects"	The whole.	
13 Vic. No. 6.	"An Act to punish false declarations by members of the Legislative Council and to give certain select committees thereof power to examine and compel the attendance of witnesses"	The whole.	
13 Vic. No. 12.	"An Act to prevent the escape from the colony of fraudulent debtors"	The whole.	
13 Vic. No. 16	"An Act to amend the law of evidence and to facilitate the admission as evidence of certain official and other documents and to give protection to persons employed in the printing and publication of papers by the order or authority of the Legislative Council or a committee thereof"	The whole	
13 Vic. No. 19	"An Act to authorise the investment of trust money"	The whole.	
13 Vic. No. 31	"An Act to effectuate the service of process issuing from the Supreme Court in its equitable jurisdiction"	The whole.	
14 Vic. No. 27	"An Act to amend the law of dower in certain respects"	The whole.	
15 Vic. No. 3	"An Act to amend in some respects the Act passed to consolidate the laws relating to juries"	The whole.	
15 Vic. No. 8	"An Act to amend in certain particulars the Act passed for the better preservation of the estates of deceased persons"	The whole.	
15 Vic. No. 11	"An Act to regulate distresses for rent and replevins"	The whole.	
15 Vic. No. 17	"An Act to repeal so much of the Imperial Act ninth George the Fourth chapter eighty-three and the Colonial Act fourth Victoria number twenty-two as vests a power of taxation in the judges of the Supreme Court"	The whole.	
16 Vic. No. 1	"An Act for shortening Acts of the Legislative Council"	The whole.	
16 Vic. No. 3	"An Act to diminish the delay and expense of proceedings in the Supreme Court in its jurisdiction as a court of equity and in infancy and lunacy"	The whole.	
16 Vic. No. 14	"An Act to amend the law of evidence"	The whole.	
16 Vic. No. 19	"An Act to consolidate and amend the laws relating to the conveyance and transfer of real and personal property vested in mortgagees and trustees"	The whole.	
17 Vic. No. 4	"An Act to extend the provisions of the Trustee Act of 1852"	The whole.	
17 Vic. No. 5	"An Act to amend the law with respect to the execution of wills"	The whole.	17 Vic.

31 VICTORIA No. 39.

References to Acts.	Title of Act.	Extent of Repeal.
17 Vic. No. 7	"An Act to amend the practice and course of proceeding in the Supreme Court in equity"	The whole.
17 Vic. No. 9	"An Act to legalize partnerships with limited liability"	The whole.
17 Vic. No. 10	"An Act for the speedy recovery of the possession of tenements unlawfully held over"	The whole.
17 Vic. No. 12	"An Act to amend the law respecting fees taken by officers of the Supreme Court"	The whole.
17 Vic. No. 17	"An Act for the appropriation of unclaimed balances in intestate and insolvent estates and for other purposes therein mentioned"	The whole. Sections one and six.
17 Vic. No. 21.	"An Act to amend the process practice and mode of pleading at law in the Supreme Court"	The whole.
No. 41.	"An Act to confer a constitution on New South Wales and to grant a civil list to Her Majesty."	The whole including schedules A. B. and C.
17 Vic. No. 22	"An Act to give greater effect to powers of attorney"	The whole.
18 Vic. No. 1	"An Act to amend the law relating to the custody of infants"	The whole.
18 Vic. No. 6	"An Act to revive the Absent Defendants Act and to amend the same"	The whole.
18 Vic. No. 13	"An Act further to amend the law of evidence"	The whole.
18 Vic. No. 18	"An Act further to amend the Jury Act"	The whole.
18 & 19 Vic. c. 54.	"An Act to enable her Majesty to assent to a Bill as amended of the Legislature of New South Wales to confer a constitution on New South Wales and to grant a civil list to her Majesty."	Schedules one A. B. and C.
19 Vic. No. 1	"An Act to amend the law relating to the administration of the estates of deceased persons"	The whole.
19 Vic. No. 2	"An Act for preventing frauds upon creditors by secret bills of sale of personal chattels"	The whole.
19 Vic. No. 12	"An Act to give further remedies to creditors against persons removing from one Australian colony to another"	The whole.
19 Vic. No. 17	"An Act to provide for the registration of legally qualified medical practitioners"	The whole.
20 Vic. No. 2	"An Act to enable infants with the approbation of the Supreme Court in its equitable jurisdiction to make binding settlements of their real and personal estate on marriage"	The whole.
20 Vic. No. 7	"An Act to amend the laws relating to drafts on bankers"	The whole.
20 Vic. No. 8	"An Act to restore writs of inquiry and writs of trial and to authorise the establishment of separate scales of costs"	The whole.
20 Vic. No. 9	"An Act to simplify the oaths of qualification for office"	The whole.
20 Vic. No. 10	"An Act to repeal so much of the Constitution Act as requires the concurrence of unusual majorities of members in the Legislative Council and Legislative Assembly respectively in the passing of Bills to alter the Constitution conferred by the said Act or the number and apportionment of representatives in the said Legislative Assembly"	The whole [see Sir W. Denison's Pro- clamation].
20 Vic. No. 11	"An Act to provide for the deposit in the Colonial Treasury of moneys in charge of officers of the Supreme Court"	The whole. 20 Vic.

References to Acts.	Title of Act.	Extent of Repeal.	31 VICTORIA No. 39.
20 Vic. No. 13	"An Act to amend the law relating to bills of lading"	The whole.	
20 Vic. No. 23	"An Act to declare that instruments affecting real estate in this colony executed out of the colony are admissible in evidence therein although not stamped"	The whole.	
20 Vic. No. 30	"An Act to facilitate the remedies on bills of exchange and promissory notes"	The whole.	
20 Vic. No. 31	"An Act for the further amendment of the process practice and mode of pleading at law in the Supreme Court and enlarging its jurisdiction in common law proceedings"	The whole.	
21 Vic. No. 6	"An Act for further facilitating the payment of debts out of real estate"	The whole.	
21 Vic. No. 7	"An Act for better securing trust funds and for the relief of trustees"	The whole.	
22 Vic. No. 3	"An Act to extend the provisions of the 20th Victoria No. 30"	The whole.	
22 Vic. No. 7	"An Act for the further amendment of the law of evidence"	The whole.	
22 Vic. No. 12	"An Act to amend and extend the Act passed for shortening Acts of the Legislature"	The whole.	
22 Vic. No. 14	"An Act to expedite suits and proceedings in equity and to facilitate the despatch of business in the Supreme Court in banco"	The whole.	
22 Vic. No. 18	"An Act for establishing district courts and for enabling the judges thereof to act as chairmen of quarter sessions"	The whole.	
22 Vic. No. 20	"An Act to amend the electoral law"	The whole.	
Order in Council of 6th June 1859	"Empowering the Governor of Queensland to make laws and to provide for the administration of justice in the said colony"	The whole except clauses fourteen and twenty-five (14 and 22) and except as in the said Order in Council is excepted and provided.	
Sir W. Denison's Proclamation of December 20 1859	[Of Electoral Districts]	The whole.	
23 Vic. No. 1	"An Act to provide a suitable quorum for the Legislative Assembly for Queensland"	The whole.	
24 Vic. No. 2	"An Act to limit the number of persons holding office under the Crown who under the Constitution Act seventeen Victoria number forty-one may be declared capable of being elected members of the Legislative Assembly"	The whole.	
24 Vic. No. 10.	"An Act to give a lien on wool and to make mortgages of sheep cattle and horses"	The whole.	
25 Vic. No. 4	"An Act to amend the law relating to cheques or drafts on bankers"	The whole.	
25 Vic. No. 5	"An Act to regulate the qualifications of practitioners in medicine and surgery and of chemists and druggists"	The whole.	
25 Vic. No. 7	"An Act to confer certain powers and privileges on the Houses of Parliament of Queensland"	The whole.	
25 Vic. No. 9	"An Act to grant further facilities for the naturalization of aliens"	The whole.	25 Vic.

31 VICTORIA No. 39.

References to Acts.	Title of Act.	Extent of Repeal.
25 Vic. No. 13	"An Act to amend the constitution of the Supreme Court of Queensland and to provide for the better administration of justice"	The whole excepting sections thirty-two forty - nine and sixty-three (32 49 and 63).
25 Vic. No. 23	"An Act to amend the Civil List annexed to Her Majesty's Order in Council of the sixth day of June one thousand eight hundred and fifty-nine"	The whole.
26 Vic. No. 4	"An Act to amend an Act to regulate the qualifications of practitioners in medicine and surgery and of chemists and druggists"	The whole.
26 Vic. No. 7	"An Act for the further amendment of the process practice and mode of pleading at law in the Supreme Court and enlarging its jurisdiction in common law proceedings"	The whole.
26 Vic. No. 9	"An Act to provide for an additional judge of the Supreme Court"	The whole.
27 Vic. No. 3	"An Act to legalise preferable liens on yearly crops"	The whole.
27 Vic. No. 14	"An Act further to amend the constitution of the Supreme Court of Queensland and further to provide for the better administration of justice"	The whole.
28 Vic. No. 6	"An Act to amend the laws affecting trade and commerce"	The whole.
28 Vic. No. 9	"An Act to provide for additional members of the Legislative Assembly"	The whole.
28 Vic. No. 18	"An Act to amend the law of evidence"	The whole
28 Vic. No. 26	"An Act to amend the law respecting the issuing of writs of summons and capias in certain seaport towns in the Colony of Queensland"	The whole
29 Vic. No. 10	"An Act to amend the District Courts Act of 1858"	The whole.
29 Vic. No. 12	"An Act to amend and consolidate the laws relating to the registration of persons qualified to vote in the election of members to serve in the Legislative Assembly"	The whole.
30 Vic. No. 5	"An Act to provide for the discharge of the duties of registrars of district courts"	The whole
30 Vic. No. 13	"An Act to enable the judges of district courts to issue jury precepts"	The whole
30 Vic. No. 14	"An Act to impose Stamp Duties"	Sections 23 24 25 26 and 30.
30 Vic. No. 17	"An Act to amend the law respecting the recovery of small debts"	The whole.

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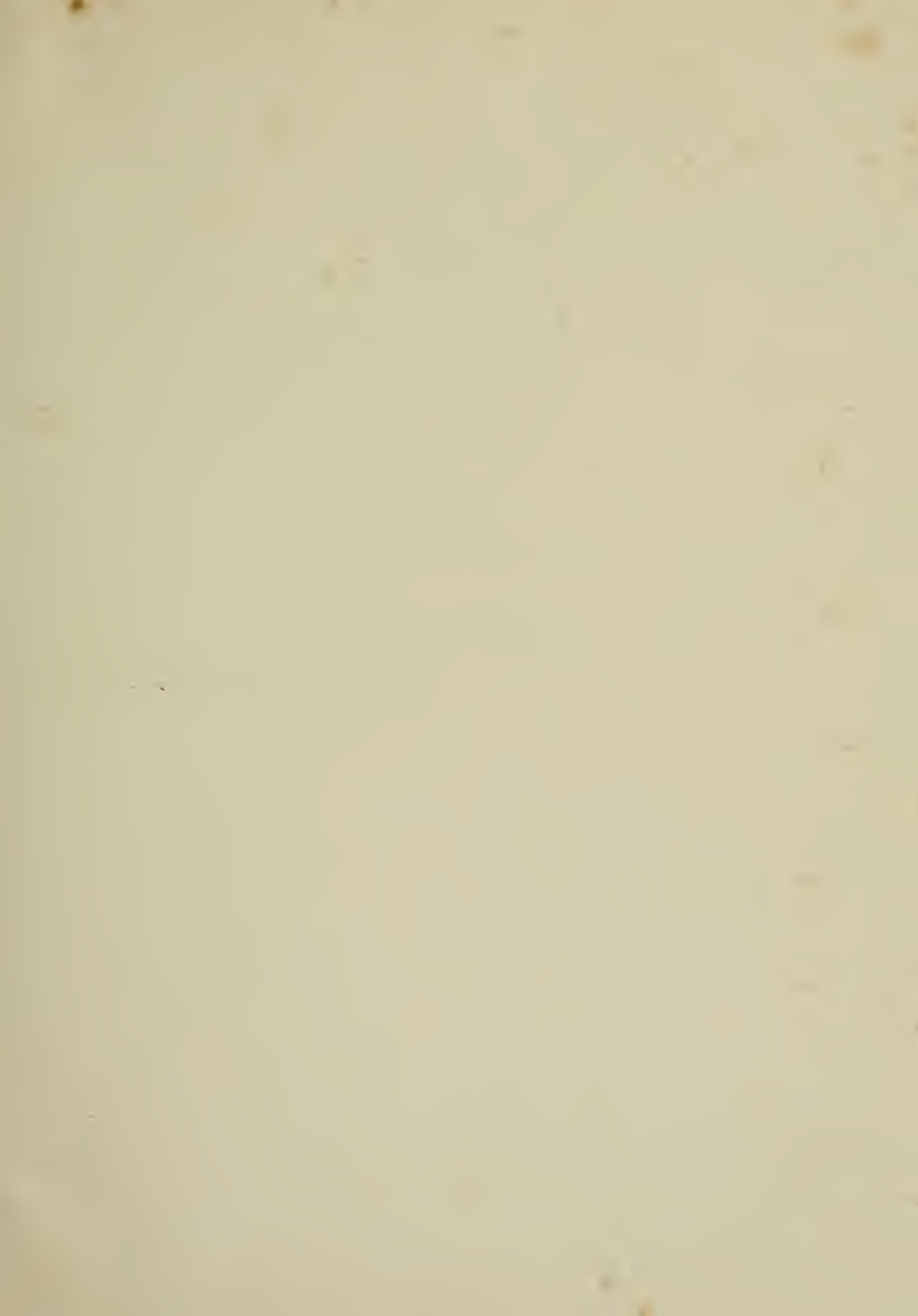
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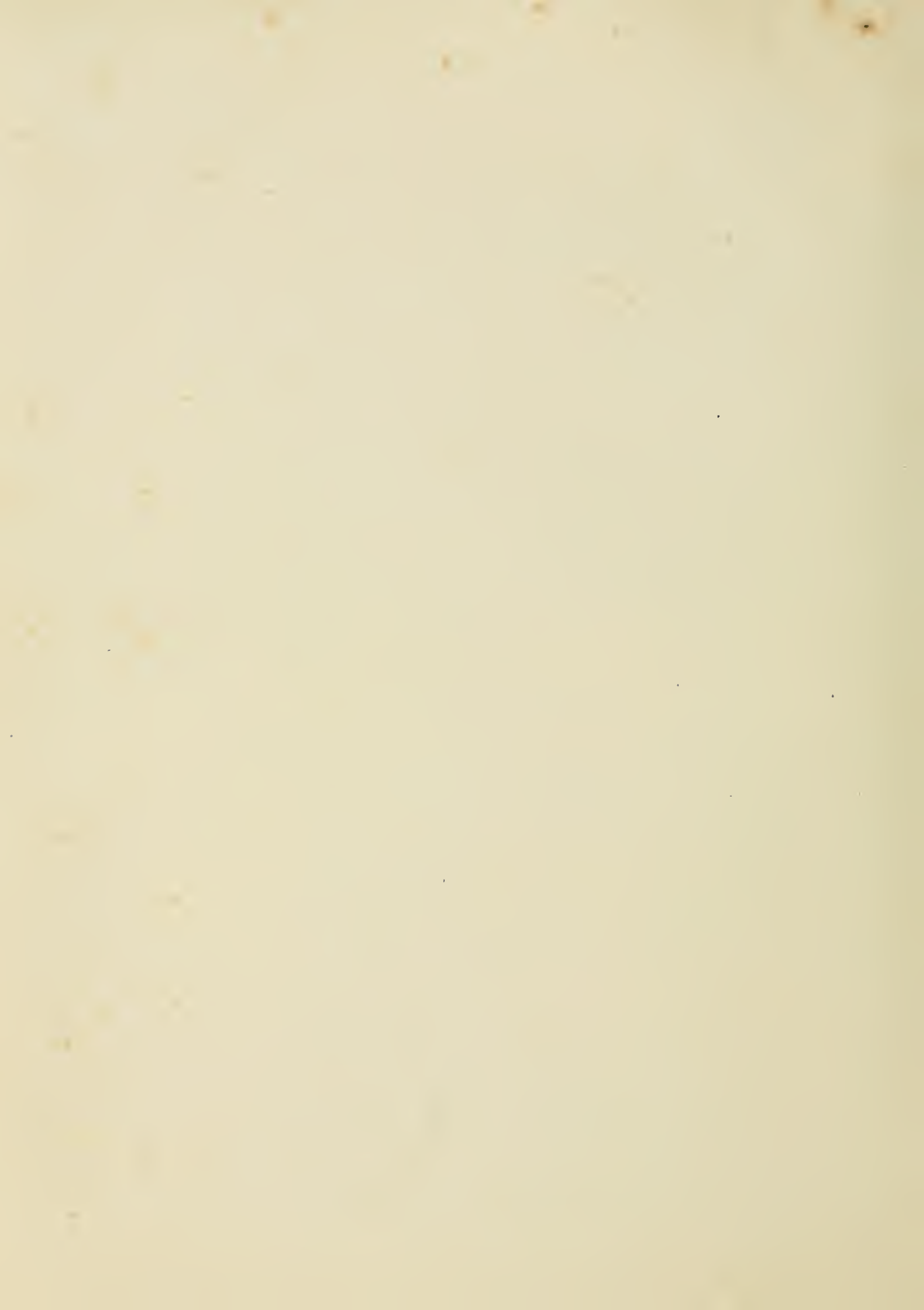
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